

# FISHING SAFETY: THE POLICY IMPLICATIONS OF COOPERATIVES AND VESSEL IMPROVEMENTS

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## HEARING

BEFORE THE

SUBCOMMITTEE ON OCEANS, ATMOSPHERE,  
FISHERIES, AND COAST GUARD

OF THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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JULY 9, 2008

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# **FISHING SAFETY: THE POLICY IMPLICATIONS OF COOPERATIVES AND VESSEL IMPROVEMENTS**

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**WEDNESDAY, JULY 9, 2008**

U.S. SENATE,  
SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES,  
AND COAST GUARD,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room SR-253, Russell Senate Office Building, Hon. Maria Cantwell, Chairman of the Subcommittee, presiding.

## **OPENING STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Good afternoon. This Senate Committee on Commerce, Science, and Transportation's Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard will come to order.

We thank our witnesses for being here and for your indulgence for not starting on time since we just had two floor votes. We appreciate your patience with us.

I understand my colleague, Senator Stevens, was here in between those two votes, and I want to recognize that his presence was here earlier and I am not sure if he will be returning. But we do have a statement for the record. I will make sure that we enter that statement in the record.

[The prepared statement of Senator Stevens follows:]

## **PREPARED STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA**

The Bering Sea and Aleutian island region off the coast of Alaska is home to the most productive and well managed fisheries in the world. We have no stocks subject to overfishing.

However, operating in this region does not come without its risks. Commercial fishing is one of the most dangerous occupations in the United States, with an occupational fatality rate that is 35 times higher than the national industry average.

In recent years commercial fishing safety has improved in Alaska. The Coast Guard attributes improvements in fishing vessel safety measures with saving 250 lives in Alaskan waters since 1993. In 1992, 36 fishermen lost their lives off the coast of Alaska, and in 1994 this number dropped to 8. These lives were saved not only by vessel improvements but also by fishery management measures such as cooperatives and individual fishing quotas, or IFQs.

IFQs and cooperatives have been enormously beneficial to the fishing community in Alaska. They have helped to put an end to the "race for fish" and brought about significant conservation and safety benefits.

However, as we examine the proposals today we must ensure that the needs of Alaska's fishermen and Alaskan coastal communities are properly addressed. All stakeholders must be consulted through an open process. This will allow us to pre-

vent loss of jobs due to potential fleet consolidation as well as to ensure that there are no negative impacts to fisheries outside the Bering Sea and Aleutian Islands.

I thank the witnesses for testifying today and look forward to your testimony.

Senator CANTWELL. We are here today for a hearing on fishing safety, the policy implications of cooperatives and vessel improvements. We are going to hear from Dr. James Sanchirico. Is that close? Close enough, I guess. Ms. Leslie Hughes, who is Executive Director of the North Pacific Fishing Vessel Owners' Association; and Commander Chris Woodley, Chief, External Affairs Division from the U.S. Coast Guard. So thank you all for being here.

I want to thank the staff and other Committee members' staff for helping us with this Subcommittee hearing today to examine fishing safety and the policy implications of cooperatives and vessel improvements.

Fishing has long been a part of both the American culture and our Nation's economic health. But the continued vitality of the fishing industry faces multiple challenges. Many marine species are overexploited and face threats from climate change, pollution, and habitat degradation. Moreover, commercial fishing is deemed as one of the most hazardous occupations in the United States, an issue that I know we are going to continue to explore here today.

In the Pacific Northwest, our history is based on rich maritime tradition that contributes billions of dollars to the region's economy each year. There are 3,000 vessels in Washington's fishing fleet that employ 10,000 fishermen. Seafood processors are 3,800 and fish wholesalers employ an additional 1,000.

For many coastal communities, these histories and economies have ebbed and flowed almost with our tide, and it is important for us to remember that these ocean resources are things that these communities depend on. They depend on the public trust and the resource to be managed appropriately.

As guardians of the ocean and the plentiful resources, it is necessary that we examine the issues that are here today with the utmost transparency. We are here today to talk about two issues: what improvements, if any, need to be made to the 10-year-old American Fisheries Act, balancing fleet safety and economic challenges; and the role of fishing cooperatives in improving safety and natural resource management.

Safety is a collective responsibility, from the individual crew members that sail in the open waters to the vessels and owners and to Government policymakers. When we grapple with these issues, it is necessary that we understand the gravity and the shared responsibility. It is a responsibility that can have a profound impact on the lives of those who depend on this for their economic vitality, and it is important that we continue to work together to resolve these issues.

On March 23, we experienced a tragic reminder of how things can go wrong. The fishing vessel, Alaska Ranger, based out of Seattle began sinking at approximately 2:50 a.m., and 43 crew members were rescued when the Coast Guard responded, but another five of the vessel's crew, including Captain Eric Peter Jacobsen, stayed behind to ensure the rest of the crew escaped safely. These five fishermen did not make it out of the harsh waters of the Bering Sea.

And their story is not all that uncommon. In 2006, the Coast Guard reported that in the decade from 1994 to 2004, 1,398 fishing vessels were lost. Most of these fishing vessels and their fatalities that resulted occurred in the north Pacific where the fishermen from my home state of Washington make their living and where, obviously, we have some of the biggest challenges with weather and rough waters. When things go wrong, it is really due to devastating failures at multiple levels, and these multiple levels require coordination between different people.

Fishing safety is not only about vessels. It is about inspections, about safety equipment, and about training. In fact, fishing safety is closely related to how fisheries are managed and the very foundation that fishing has come to be built on, competition. It is a tough business and a tough business for those who work the boats and those who make the businesses run in the end. It is a tough business that is driven by incentives and dangerous conditions that work together to place a countless number of fishermen at risk.

But it does not need to be that way. Improvements to fishing safety and good fishing management practice can and should be continued to be pursued. If we change the incentives, we change the way people fish. If we change the way people fish, we can improve the safety and prevent future tragedies at sea.

As we discuss these issues today, safety for our vessels and fishermen, it is imperative that we continue to have an open process and to talk about policies and resource management that will help all of us be successful in this effort.

I look forward to the testimony of our witnesses in exploring the benefits and challenges of utilizing various frameworks for better management of this resource.

I look forward to continuing to dialogue with my colleagues here in the Senate and in the House of Representatives on various proposed changes in these areas of both safety and fisheries management. We owe it to our coastal communities and to our fishermen and the American people to collectively act as stewards for one of our greatest resources, our oceans.

And with that, we will turn it over to our panel and start with Dr. James Sanchirico. Is that right?

Dr. SANCHIRICO. It is Sanchirico.

Senator CANTWELL. Sanchirico. Thank you.

And if the witnesses could take 5 minutes for your testimony. We certainly will take information that is longer than that and you can submit that for the record. But welcome and thank you for being here.

**STATEMENT OF JAMES SANCHIRICO, ASSOCIATE PROFESSOR,  
DEPARTMENT OF ENVIRONMENTAL SCIENCE AND POLICY,  
UNIVERSITY OF CALIFORNIA AT DAVIS AND UNIVERSITY  
FELLOW, RESOURCES FOR THE FUTURE**

Dr. SANCHIRICO. Good afternoon, Chairman Cantwell, and thank you for the opportunity to speak with you today. I am James Sanchirico, Associate Professor at the University of California-Davis, and University Fellow at Resources for the Future. The opinions I offer today are my own and should not be attributed to

the University of California, Resources for the Future, or the NOAA Science Advisory Board, of which I am a member.

The purpose of my remarks is to provide a brief overview of the economic benefits of cooperatives and individual fishing quota systems for the management of marine commercial fisheries.

As the Committee is fully aware, the marine species residing in U.S. territorial waters and the men and women who make their livelihood from them are at a critical juncture. Without secure access to the resource, individual rational actors compete with each other to capture as much of it as possible. Operating under so-called rule of capture incentives whereby resources are not owned until on board a vessel results in a competition for fish that leads to low wages, dangerous working conditions, low-valued products, excess harvesting and fish processing capacity, and ever shorter fishing seasons. Economically depressed fisheries are vulnerable to short-term thinking and risk taking, and fishery participants cannot afford to invest in long-term sustainability.

This outcome is in nobody's best interest. In other words, a tragedy of the commons ensues.

Policies that address the rule of capture incentives include individual fishing quota systems and cooperatives. In each policy, the allocation of a catch share reduces the incentives to invest in the race for fish. Participants have greater certainty on their catch levels and the ability to buy and sell shares provides flexibility for participants to adjust the scale of their operations.

Around the world, fisheries managed with individual fishing quotas or cooperatives experience sustainable profit rates, ranging from 20 to 60 percent. These overall economic benefits are indicative of both cost savings and revenue increases and derive from two aspects of the programs. First, there are benefits that result directly from providing ownership of the catch shares, and second, there are benefits that derive from the ability to transfer the shares from one fishing participant to another.

The three main benefits from ownership include: the reduced incentive to race for fish which results in longer fishing seasons; and second, the slower pace of fishing improves the ability to optimize on-board processing facilities that has resulted in increases in the product recovery rate per pound of fish caught. For example, the Pacific Whiting fishery has experienced increases in product recovery rate from 17 to 24 percent, and according to one statistic that I found, this corresponds to approximately 10 million pounds of additional product from the same catch.

The third benefit from ownership of shares is that it shifts the incentives from maximizing the quantity of fish caught to maximizing the value of the catch. Throughout the world, we have seen shifts in the product mix to more valuable products, whether it be in the New Zealand red snapper fishery that went from a frozen product to selling in the live fish market in Japan. We also see changes in the type of fishing methods, timing, and location of fishing, all with the goal of improving the quality and the value of the fish caught.

The three main benefits that stem from the transferability of the shares include: one, the reduction in the number of vessels and fishing capacity. For example, after the first year in the implemen-



tation of the Pollock Cooperative, only 16 out of the 20 vessels fished. In the Pacific Whiting Cooperative, only 6 out of the 10 vessels fished.

Transferability also provides greater flexibility for participants to match quota holdings with catches. In the fisheries I have looked at around the world that are operated under individual fishing quota systems, we find that on average 30 to 40 percent of the TAC is being traded in any given year, which illustrates the importance and the economic value of allowing transferability.

Finally, transferability provides incentives that lead to the total allowable catch being caught at the lowest possible costs, as higher-cost vessels find it more profitable to sell or trade their shares than to fish them.

I want to conclude with a comment. One of the most powerful forces of change created by catch share programs is the development of a constituency whose wealth is a function of the health of the marine environment. Wealth creation in fisheries will lead to improved stewardship, sustainability, and further innovation to increase value.

To summarize, in many fisheries, stocks are overfished, habitats are degraded, and fishermen are scraping by from one season to the next, and the public is receiving very little return from its marine assets.

This does not have to be the case. There is a growing body of evidence that management tools, such as cooperatives and individual fishing quotas, are a means to achieving sustainable marine populations, fishing communities, and returns on our natural assets.

Thank you.

[The prepared statement of Dr. Sanchirico follows:]

PREPARED STATEMENT OF JAMES SANCHIRICO, ASSOCIATE PROFESSOR, DEPARTMENT OF ENVIRONMENTAL SCIENCE AND POLICY, UNIVERSITY OF CALIFORNIA AT DAVIS AND UNIVERSITY FELLOW, RESOURCES FOR THE FUTURE

Good afternoon, Chairman Cantwell and Members of the Committee and thank you for the opportunity to speak to you today. I am James Sanchirico, an Associate Professor at the University of California at Davis and a University Fellow at Resources for the Future, a nonpartisan, independent research organization specializing in environment, energy, and natural resource issues. The opinions I offer today are my own and should not be attributed to the University of California, Resources for the Future, or the NOAA Science Advisory Board, of which I am a member.

The purpose of my remarks is to provide a brief overview of the economic benefits of cooperatives and individual fishing quota systems for the management of marine commercial fisheries.

I use the vernacular individual fishing quota systems (IFQs) rather than dedicated access privileges (DAPs) or limited access privilege programs (LAPPs) to describe management (cap-and-trade) systems in which a share of the total annual allowable catch is allocated to fishing participants.

Before I begin to discuss specific types of benefits from implementing cooperatives and IFQs, it is instructive to provide the baseline from which we are measuring these benefits.

As the Committee is fully aware, the marine species residing in U.S. territorial waters and the men and women who make their livelihood from them are at a critical juncture.

- Many species are overexploited and face additional threats from land-based pollution, habitat damage, and climate change. Still unknown is the extent to which our actions affect the nature of food webs and ecosystems, with consequences yet to be determined.
- The vessels and fishing power of many U.S. fisheries exceed levels that would maximize economic returns to society.

- Competition for fish leads to low wages, dangerous working conditions, and ever shorter fishing seasons. Short seasons with large catches, in turn, force fish processors to invest in facilities that can handle large quantities but run at partial capacity for most of the year, creating boom-and-bust cycles in local employment. With supply gluts, most fish are processed and frozen, even though consumers seem to prefer fresh fish throughout the year.
- Economically depressed fisheries are vulnerable to short-term thinking and risk-taking, and fishery participants cannot afford to invest in long-term sustainability.

These conditions are not fated, however. There is a body of research dating back to the 1950s that highlights the cause of these symptoms.<sup>1</sup> Without secure access to the resource, individual rational actors will compete with each other to capture as much of it as possible. Operating under so called “rule of capture” incentives, whereby resources are not “owned” until onboard a vessel, results in the popular phrase, “too many boats chasing, too few fish”, which is an outcome that is in nobody’s best interest. In other words, a tragedy of the commons ensues. I would argue, however, that the problem is more complicated than just too many boats chasing and too few fish. Rather, our marine commercial fisheries are better described as having too many boats, too much fishing power, too little wealth, too few top predators, too much habitat damage, too much human and capital at risk, too few resources for monitoring and enforcement, and so on.<sup>2</sup>

Policies that address the “rule of capture” incentives include IFQs and cooperatives.

- IFQ programs are analogous to other cap-and-trade programs, such as the sulfur dioxide allowance-trading program. They limit fishing operations by setting a total allowable catch (TAC), which is then allocated among fishing participants, typically based on historical catch. In most IFQ fisheries throughout the world, participants are able to trade their perpetual right to a share of the TAC and their annual catch equivalent. The initial allocation process and market rules are designed and implemented by the Regional Fishery Management Councils.
- Cooperatives, such as the Pacific Whiting Conservation Cooperative, the Montauk Tilefish Association, and the two in the North Pacific Pollock Fishery, are formed around a fishing sector that has received an allocation of the allowable catch and has a fixed set of participants. The allocation of the cooperative’s allowable catch to each member along with any trading between the members is done through private negotiations and rules as outlined in their charter.

While each policy is slightly different from an instrument design perspective and the respective roles of government intervention, the key point is that both treat the cause rather than the symptoms of insecure rights to our marine resources.<sup>3</sup> That is, the allocation of shares of the TAC reduces the incentives to race for fish, as participants have greater certainty about their catch levels, and the ability to buy and sell shares provides flexibility for participants to adjust the scale of their operations.

After discussing the overall economic benefits, I divide up the discussion of the societal benefits from these instruments into the gains from ownership of a share and the gains from trading the shares. I also provide examples of those gains being realized. Because there are virtually no differences between a cooperative and an IFQ-managed fishery along these two dimensions, I will not make a distinction between the benefits arising from a cooperative or IFQ fishery.

#### Overall Economic Benefits

- Between 1990 and 2003, the value of IFQ fisheries in New Zealand (NZ) more than doubled, while at the same time fish stocks were rebuilding.<sup>4</sup>

<sup>1</sup>See, for example, H. Scott Gordon, *Economic Theory of a Common Property Resource: The Fishery*, 75 JOURNAL OF POLITICAL ECONOMY 124 (1954); Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968); and James Sanchirico and Susan Hanna, *Navigating U.S. Fishery Policy into the 21st Century*, 19 MARINE RESOURCE ECONOMICS 395 (2004).

<sup>2</sup>For a historical perspective on how the U.S. arrived at the current state of our marine fisheries, see J. N. Sanchirico and J. E. Wilen, *Global Marine Fishery Resources: Status and Prospectus*, INTERNATIONAL JOURNAL OF GLOBAL ENVIRONMENTAL ISSUES, Vol. 7, No. 2/3 (2007).

<sup>3</sup>See, for example, James E. Wilen, *Why Fisheries Management Fails: Treating Symptoms Rather Than Causes*, 78 BULLETIN OF MARINE SCIENCE 529 (2006).

<sup>4</sup>See, R. Newell, K. Papps, and J. N. Sanchirico, *Asset Pricing in Created Markets for Fishing Quota*, AMERICAN JOURNAL OF AGRICULTURAL ECONOMICS, Vol. 89 No. 2 (2007); Newell, R., J. N. Sanchirico, and S. Kerr, *Fishing Quota Markets*, J. OF ENVIRON. ECONOMIC. MANAGEMENT,

- The profit rate for 33 of NZ IFQ fisheries between 1990 and 2003 was estimated to be 20 percent, with significant variation between fish stocks, where high-valued stocks experienced greater rates than low-valued stocks, everything else being equal.<sup>5</sup>
- Icelandic IFQ fisheries were estimated to yield a profit rate of 25 percent.<sup>6</sup>
- The British Columbia (BC) Pacific Halibut Fishery is estimated to have profit rates on the order of 60 percent.<sup>7</sup>
- In fisheries without sufficient economic data to measure profit changes, total revenues of fisheries under an IFQ or cooperative have more than doubled.<sup>8</sup>
- In NZ IFQ fisheries, approximately 30 percent of the cost of monitoring and enforcing, including scientific research, is funded by the quota owners.

**Benefits of ownership of the catch shares include:**

- *Reduced incentive to race for fish, resulting in longer seasons*
  - In the BC Halibut Fishery, the season length went from 10 days the year before the implementation of the IFQ (1990) to 260 days the year after.<sup>9</sup>
  - In the U.S. Pacific Halibut fishery the season length prior to implementation of the IFQ (1994) averaged 2–3 days. After implementation, the season length increased to an average of 245 days.
  - The season length went from 75 days in 1998 to 149 days in 1999 after the creation of the cooperatives in the North Pacific Pollock fishery, even though the offshore sector had a reduction in their allocation of the TAC. A similar result occurred in the Pacific Whiting Cooperative.<sup>10</sup>
- *Slowed pace of fishing, improving the ability to optimize onboard processing facilities, resulting in increases in the product recovery rate per pound of fish caught*
  - The Pacific Whiting Cooperative experienced increases in product recovery from 17 percent to 24 percent, which corresponds to approximately 10 million more pounds of seafood from the same catch.<sup>11</sup>
  - North Pacific Pollock Cooperatives product recovery rate went from 19 percent in 1998 to 30 percent in 2007.<sup>12</sup>
- *Incentives shifted from maximizing the quantity of fish caught to maximizing the value of the catch.*
  - The product mix shifts to more valuable products, which results in higher net value per pound of fish caught.
    - Since the creation of the cooperatives in the Pacific Pollock fishery, the share of catch going to produce fillets has increased.<sup>13</sup> The shift to higher-valued end products was also evident in the Pacific Whiting Cooperative.

Vol. 49 No. 3 (2005); J. N. Sanchirico and R. Newell. Catching Market Efficiencies: Quota-based Fishery Management, RESOURCES, No. 150, Spring (2003).

<sup>5</sup>NEWELL ET AL. *supra* note 4.

<sup>6</sup>R. Arnason. The Icelandic Individual Transferable Quota System: A descriptive account." MARINE RESOURCE ECONOMICS Vol. 8, No. 3 (1993).

<sup>7</sup>James E. Wilen. Property Rights and the Texture of Rents in Fisheries in *Evolving Property Rights in Marine Fisheries* (ed. D. Leal). Rowman and Littlefield Publishers. Oxford. UK (2005).

<sup>8</sup>Redstone Strategy Group and Environmental Defense Fund. Assessing the potential for LAPPs in U.S. Fisheries. (2007) (Available at <http://www.redstonestrategy.com/documents/2007-03-26%20Assessing%20the%20Potential%20for%20LAPPs%20in%20US%20Fisheries.pdf>)

<sup>9</sup>M. Herrmann. Estimating the induced price increase for Canadian Pacific halibut with the introduction of the individual vessel quota program. CANADIAN JOURNAL OF AGRICULTURAL ECONOMICS Vol. 44 No. 2 (1996).

<sup>10</sup>R. Townsend. Producer Organizations and Agreements in Fisheries: Integrating Regulation and Coasean Bargaining in Rents in Fisheries in *Evolving Property Rights in Marine Fisheries* (ed. D. Leal). Rowman and Littlefield Publishers. Oxford. UK (2005).

<sup>11</sup>G. Sylvia, H. Munro Mann, and C. Pugmire. Achievements of the Pacific whiting conservation cooperative: rational collaboration in a sea of irrational competition in *Case Studies in Fisheries Self-governance* (Eds. R. Townsend, R. Shotton, and H. Uchida) FAO FISHERIES TECHNICAL PAPER No. 504. Rome, FAO. 2008.

<sup>12</sup>Pollock Conservation Cooperative and High Seas Catchers' Cooperative Final Joint Annual Report 2006 to the North Pacific Fishery Management Council, January 31, 2007.

<sup>13</sup>*Id.*

- The NZ Red Snapper fishery moved from mainly a frozen product to the live fish market in Japan.<sup>14</sup>
- In the BC Halibut fishery, fresh product increased from 42 percent of the catch to over 90 percent after implementation.<sup>15</sup>
- Iceland's demersal fisheries experienced total revenue increases of \$6 million in 1984 due to higher quality fish.<sup>16</sup>
- Changes to the types of fishing methods (gear), timing, and location of fishing improve the quality and value of the fish caught
  - A skipper in Canada's fishing quota system is quoted as saying how participants have the opportunity to fish when prices are high or "work the market more."<sup>17</sup>
  - Surveys of Canadian fish processors working with the BC Halibut fishermen support this statement. For example, they noted that fishermen were calling in to find out the expected price of fish before heading out to sea.<sup>18</sup>
  - NZ fishermen reported shifting fishing trips to later in the season when prices were traditionally higher.<sup>19</sup>
  - North Pacific Pollock fishermen report being able to better target females during the roe season.<sup>20</sup>
  - NZ fisheries experienced changes from trawl or seining to long-lining or gill netting to improve on-board handling and quality of the caught fish.<sup>21</sup>

**Benefits of the transferability of the catch shares include:**

- *Reduced number of vessels and fishing capacity.*
  - In the first year after the implementation of the Pollock Cooperative, only 16 out of the 20 vessels fished; only 6 out of 10 fished in the Pacific Whiting fishery post-implementation of the cooperative.<sup>22</sup>
  - New Zealand fisheries have seen a reduction in quota owners on the order of 35 percent since the program's inception in 1986. As of 2003, the majority of the reductions were in mid-size firms.<sup>23</sup>
  - The Mid-Atlantic Surf Clam and Ocean Quahog fishery has seen over a 54 percent decline in the number of vessels.<sup>24</sup>
- *Greater flexibility provided for participants to match quota holdings with catches.*
  - The Pacific Whiting Cooperative reported lower rates of bycatch post implementation.<sup>25</sup> Whether the reduction is due to the formation of the cooperative, however, is not clear as the other non-coop sectors have also seen a decline.<sup>26</sup>
  - Annual trades or leases of catches for the median fish stock are on the order of 40 percent of the total allowable catch in New Zealand, 30 percent in Iceland, and 40 percent in South East Australian trawl IFQ fisheries.<sup>27</sup>
- *Incentives provided that lead to the TAC being caught at the lowest possible costs, as higher-costs (less efficient) vessels find it more profitable to sell or trade their shares than to fish them.*
  - Unfortunately, the fact that very little economic data and even less data on the costs of fishing in IFQ and cooperative fisheries exist precludes me from

<sup>14</sup>R. Boyd and C. Dewees. Putting theory into practice: individual transferable quotas in New Zealand's fisheries. SOCIETY & NATURAL RESOURCES Vol. 5, no. 2 (1992).

<sup>15</sup>K. E. Casey et. al. The Effects of Individual Vessel Quotas in the British Columbia Halibut Fishery. MARINE RESOURCE ECONOMICS Vol. 10 no. 3 (1995); HERRMANN *supra* note 9.

<sup>16</sup>ARNASON *supra* note 6.

<sup>17</sup>Knudson, T. 2003. "Harvesting the Sea" Sacramento Bee (available online at <http://www.sacbee.com/static/live/news/projects/denial/>)

<sup>18</sup>CASEY ET AL. *supra* note 15.

<sup>19</sup>BOYD AND DEWEES, *supra* note 14.

<sup>20</sup>WILEN, *supra* note 7.

<sup>21</sup>BOYD AND DEWEES, *supra* note 14.

<sup>22</sup>& Townsend, *supra* note 10.

<sup>23</sup>J. N. Sanchirico and R. Newell. Analysis of Concentration and Consolidation in NZ Fishing Quota Markets: A REPORT TO THE NEW ZEALAND MINISTRY OF FISHERIES, June 2003.

<sup>24</sup>S. Wang. The Surf Clam ITQ Management: AN EVALUATION. MARINE RESOURCE ECONOMICS Vol. 10, No. 1 (1995).

<sup>25</sup>TOWNSEND, *supra* note 10.

<sup>26</sup>SYLVIA, *supra* note 11.

<sup>27</sup>J. N. Sanchirico, D. Holland, K. Quigley, and M. Fina. Catch-quota balancing in Multispecies Individual Fishing Quotas. MARINE POLICY Vol. 30 No. 6 (2006).

providing examples on the realized costs savings, although the substantial values of quotas are indicative of both cost savings and revenue increases.

- There are, however, some ex ante predicted estimates of the potential cost reductions, which are on the order of 50 percent of total revenues in the Mid-Atlantic surf clam and ocean quahog IFQ and cost reductions (\$8 million) greater than two times the potential revenue gains (\$3 million) for 1993 in the Gulf of Mexico Red Snapper fishery.<sup>28</sup>

One of the most powerful forces of change created by catch-share programs is a constituency whose wealth is a function of the health of the marine environment. In an IFQ fishery, the asset value from owning quota in perpetuity provides incentives to invest in the long-term sustainability of the fishery and the income to the members of the cooperative provides similar incentives.<sup>29</sup> For example, Iceland Cod quota owners lobbied the government to create no-take marine reserves off of the northern coast of Iceland to protect spawning areas; New Zealand quota owners invest in scientific and value-added research, and have voluntarily shifted fishing efforts away from spawning areas.

Wealth creation will lead to improved stewardship, sustainability, and further innovation to increase value.<sup>30</sup>

To summarize, in many fisheries, stocks are overfished, habitats are degraded, fishermen are scraping by from one season to the next, and the public is receiving very little return from its marine assets.

This does not have to be the case. We have a large and growing body of evidence that management tools, such as cooperatives and individual fishing quotas, are a means to achieving sustainable marine populations, fishing communities, and returns on our natural assets.

Thank you.

Senator CANTWELL. Thank you very much.

Ms. Hughes, thank you for being here.

**STATEMENT OF LESLIE J. HUGHES, EXECUTIVE DIRECTOR,  
NORTH PACIFIC FISHING VESSEL OWNERS' ASSOCIATION  
VESSEL SAFETY PROGRAM**

Ms. HUGHES. Good afternoon, Madam Chairman. Thank you very much for the opportunity to testify on fishing vessel safety today.

I am Leslie Hughes, the Executive Director of the North Pacific Fishing Vessel Owners' Association, or NPFVOA, Vessel Safety Program, a nonprofit organization totally dedicated to safety training and education of commercial fishermen. I have worked in the fishing industry for 33 years and 23 of those have been with NPFVOA since its inception. I have served 10 years on the Coast Guard's commercial Fishing Industry Vessel Safety Advisory Committee and have recently been reappointed for another 3-year term.

The vessel safety program was developed in 1985 in cooperation with the U.S. Coast Guard as a voluntary effort to improve the poor safety record of the fishing industry in the North Pacific. The success of the program is evidenced by attendance in our courses, which now exceeds 34,000, and of that, 70 percent is voluntary and not required by the Coast Guard, which speaks very well for the industry. It is regarded by the Coast Guard as the model safety training program for our country.

<sup>28</sup> Q. Weninger. Assessing efficiency gains from individual transferable quotas: an application to the Mid-Atlantic surf clam and ocean quahog fishery. *AMERICAN JOURNAL OF AGRICULTURAL ECONOMICS* Vol. 80 No. 4 (1998); Q. Weninger and J. R. Waters. Economic benefits of management reform in the northern Gulf of Mexico reef fish Fishery, *JOURNAL OF ENVIRONMENTAL ECONOMICS AND MANAGEMENT* Vol. 46, No. 2 (2003).

<sup>29</sup> While the same incentives exist under both policies, they are arguably not as strong under a cooperative, as there is less long-term certainty. See, for example, the discussion in SYLVIA *supra* note 11 regarding the issues with respect to the Pacific Whiting cooperative.

<sup>30</sup> WILEN, *supra* note 3.

Our program has a regional focus, is part of the community, and is very integrated into the fishing industry. Our program is “by fishermen for fishermen,” and our membership base of more than 200 vessels represents a broad range of gear types and approximately 150 support businesses and individuals. Having a vessel membership is extremely important because it further builds community involvement, helps to create a safety culture, and funds the program.

NPFVOA serves a very diverse fleet that home-ports in Seattle and operates primarily in Alaska. The Seattle-based vessels account for about 85 percent of the catch in Alaska, which equates to about 50 percent of the Nation’s entire seafood harvest.

Our main interaction with this industry is through safety training, which we regard as a key component of safety and unquestionably a key factor in the prevention of casualties and improved emergency response. Other key factors are professional crews, well-constructed and maintained vessels, Coast Guard regulations and oversight, and how fisheries are managed.

And I would now like to address several management schemes on which this hearing is focusing, the first being the AFA vessel replacement.

The AFA has by most measures been an extremely good piece of legislation as, in part, it has established a well-reasoned rationalized fishery management program for our Nation’s largest fishery, Bering Sea pollock. Its shortcoming is that it precludes vessel owners the ability to replace AFA-qualified vessels that could become worn out and increasingly unsafe over time. Under current law, to be replaced, a vessel must be a total constructive loss. This is an unreasonable predicament that badly needs to have the language amended so that vessel owners can replace aging vessels that become unsafe with new and modern vessels.

Others here can address replacement language details, but the need is clear. Most of the Bering Sea pollock trawlers, for instance, were built in the 1970s and 1980s with a hull life expectancy of about 30 years. So corrective actions now are extremely timely.

Second, rationalized fishery management and vessel safety. Rationalized fishery management programs off Alaska now exist for halibut, sablefish, Bering Sea/Aleutian pollock, Bering Sea/Aleutian king, Tanner, and snow crab and for the Amendment 80 groundfish trawl fleet. These fisheries are managed by either co-ops or IFQ’s. These management programs are similar in many ways and they share common advantages to vessel operations and vessel safety. Harvest quotas are allocated to co-op members or to individual owners for their exclusive usage during an extended season, which result in the following benefits. Vessels can plan for their season and conduct their fishing of their quota during reasonable weather at a reasonable pace to be safe and maximize economic returns, fleet consolidations, especially in the more overcapitalized fisheries, and improved economic viability for the active vessels.

Example. The notoriously dangerous crab fishery sustained an average of eight fatalities per year in the 1990s, but in the past 3 years under IFQ’s, there have been zero fatalities and no search

and rescue missions on vessels participating in rationalized crab fisheries.

And last, the Freezer Longline Cooperative. Thirty-two of the 36 vessels in the Freezer Longline fleet are active members of NPFVOA. Thirty-four of the 36 are members of the Freezer Longline Coalition that are asking Congress to be allowed to form a co-op. The NPFVOA strongly supports the Freezer Longline Coalition's ability to form a co-op which I believe will promote safer operations, minimize loss of life and vessel casualties, and improve efficiencies.

Thank you.

[The prepared statement of Ms. Hughes follows:]

PREPARED STATEMENT OF LESLIE J. HUGHES, EXECUTIVE DIRECTOR, NORTH PACIFIC FISHING VESSEL OWNERS' ASSOCIATION (NPFVOA) VESSEL SAFETY PROGRAM

Thank you, Madame Chairwoman and Members of the Subcommittee, for the opportunity to testify today at this important hearing on fishing vessel safety.

I am Leslie Hughes, Executive Director of the North Pacific Fishing Vessel Owners' Association (NPFVOA) Vessel Safety Program, a non-profit association totally dedicated to safety training and education of commercial fishermen. Our facility is located in Seattle. I have worked for NPFVOA since the inception of the Vessel Safety Program 23 years ago, and prior to that I worked for a leading Northwest naval architect and maritime law firm. During my career I have worked closely with many governmental agencies and served 10 years on the Coast Guard's commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC). I was recently re-appointed to that committee for another three-year term.

**The Vessel Safety Program**

The NPFVOA Vessel Safety Program was developed in 1985 in cooperation with the U.S. Coast Guard as a voluntary effort to improve the poor safety record of the commercial fishing industry in the North Pacific. Since the mid-1980s, I have seen significant improvements in safety practices within the industry. The success of our program is evidenced by attendance in NPFVOA's Coast Guard-approved safety training courses, which now exceeds 34,000, and of which 70 percent is voluntary and not required by the Coast Guard.

It is extremely important that a program like this is built upon a cooperative effort between industry and the Coast Guard. Our program has a regional focus, is part of the community, and is very integrated into the fishing industry. We maintain that our program is "by fishermen for fishermen." We raise funds to support NPFVOA mostly by vessel dues for membership, by class fees and by charging for educational safety materials we have developed. Having a vessel membership is extremely important as it further builds community involvement, and helps to create a "safety culture." NPFVOA's membership base is comprised of more than 200 vessels, representing a broad range of gear types, and approximately 150 support businesses and individuals.

Although NPFVOA's Vessel Safety Program is portable, it has been and remains focused on a very diverse and dynamic fleet that home ports in the Seattle area and operates primarily in Alaska. Seattle-area fishing vessels account for about 85 percent of the catch in Alaska, which equates to approximately 55 percent of the Nation's entire seafood harvest. The fleet ranges from 32 ft gill net vessels operated by crews of one or two people to 350 ft factory trawlers with crews of more than 120 people with diverse jobs and skills. NPFVOA's primary interaction with this industry is through safety training, which we regard as a key component of safety. It has unquestionably been a vital factor in improving how casualties can be prevented, and how people respond if faced with an emergency.

Other key factors to the safety of our fishing fleets are professional crews, well constructed and maintained vessels, Coast Guard regulations and oversight, and how fisheries are managed. The Fishing Vessel Safety Act of 1988 implemented by the Coast Guard in 1991 emphasized response capabilities, with much less emphasis on preventative measures. Some regional Coast Guard oversight actions and changes to how certain fisheries are managed have contributed significantly to *prevention* of casualties.

I would now like to address several management schemes on which this hearing is focusing:

### **American Fisheries Act (AFA) Vessel Replacement**

The American Fisheries Act (AFA) has by most measures been an extremely good piece of legislation, as in part, it has established a well reasoned “rationalized fishery management program” for our Nation’s largest fishery—Bering Sea pollock. The shortcoming of this act is that it precludes vessel owners the ability to replace AFA qualified vessels that could become worn out and increasingly unsafe over time. Under current law, to be replaced, a vessel must be a total constructive loss. This is an unreasonable predicament that badly needs to have the language amended so that vessel owners can replace aging vessels that become unsafe with new and modern vessels. Others on this and the next panel are better qualified than I to discuss replacement language details but the need is clear. Most of the Bering Sea pollock trawlers were built in the 1970s–1980s with hull life expectancy of 25–30 years. Corrective actions are now extremely timely.

### **Rationalized Fishery Management and Vessel Safety**

Open access fishery management regimes influence safety because they establish the rules by which fishermen compete against one another. Under the right conditions, these regimes create latent unsafe conditions in the form of a highly competitive economic operating environment where fishermen are likely to significantly increase risk-taking behaviors. These behaviors include vessel overloading, operating with minimal or no rest, and intentionally operating in hazardous weather in order to maximize catch and improve economic gain. Rationalized fishery management has the potential to positively impact safety by removing the economic necessity of these risk-taking behaviors.

Rationalized fishery management programs off Alaska now exist for halibut, sablefish, Bering Sea/Aleutian pollock, Bering Sea/Aleutian king, Tanner and snow crab and for the Amendment 80 ground fish trawl fleet or by individual fishing quotas (halibut, sablefish and crab). These management programs are similar in many ways and they share common advantages to vessel operations and vessel safety. Harvest quotas are allocated to cooperative members or to individual vessel owners for their exclusive usage during an extended season. In practice, this means that vessels can plan for their season, and they can conduct their fishing, of their quota, during reasonable weather at a reasonable pace to be safe and maximize economic returns. Additional benefits under a quota-based system include fleet consolidations, especially in the more over-capitalized fisheries, and improved economic viability for the active vessels.

I will offer one example of positive results—the notoriously dangerous Bering Sea/Aleutian king, Tanner and snow crab fishery. In the decade of the 1990s, prior to rationalization, these crab fisheries sustained an average of eight fatalities per year. In the past 3 years under new Individualized Fishing Quotas (IFQ’s) fisheries management, there have been zero fatalities and no Coast Guard Search and Rescue missions on vessels participating in rationalized crab fisheries.

### **Freezer Longline Cooperative**

Thirty-two of the 36 vessels in the freezer longline fleet are active members of the NPFVOA Vessel Safety Program. Thirty-four of the 36 vessels (94.4 percent) are members of the Freezer Longline Coalition that are asking Congress to be allowed to form a cooperative. The NPFVOA strongly supports the Freezer Longline Coalition’s ability to form a cooperative, which I believe will promote safer operations, minimize loss of lives and vessel casualties, and improve efficiencies.

To conclude, speaking for the Pacific Northwest and Alaska, there is no doubt that significant improvements to safety have occurred since the mid-1980s when the NPFVOA Vessel Safety Program was established. The National Institute of Safety and Health (NIOSH) reports there has been a 51 percent decline in fatality rates among commercial fishermen in Alaska from 1990 to 2006. I believe such statistics are attributable to the safety training infrastructure that exists in our region, the proactive safety efforts by our fishermen, and the rationalized fishery management systems that have been put in place.

Thank you for the opportunity to testify today on behalf of the NPFVOA Vessel Safety Program, and for holding this important hearing.

Senator CANTWELL. Thank you.  
Commander Woodley, thank you very much for being here.



**STATEMENT OF COMMANDER CHRISTOPHER WOODLEY,  
THIRTEENTH COAST GUARD DISTRICT STAFF, U.S. COAST  
GUARD, DEPARTMENT OF HOMELAND SECURITY**

Commander WOODLEY. Thank you, Madam Chair, for the opportunity to testify today. I am Commander Chris Woodley from the Thirteenth Coast Guard District in Seattle.

Today I will provide testimony regarding the safety performance of cooperative and quota-based fishery regimes, how such regimes may affect the freezer longline fleet of the Bering Sea/Aleutian Islands, and will then briefly discuss the safety implications of the vessel replacement limitations as found in the American Fisheries Act.

While the Coast Guard has long recognized potential safety concerns associated with open access fisheries and the attendant problems caused by the race to fish, we as an agency historically have been reluctant to support or oppose quota cooperative fishery management programs primarily because of the associated allocative controversies associated with those programs.

In the past 15 years, however, the North Pacific Fishery Management Council has implemented such programs for four major fisheries in the Bering Sea/Aleutian Island management areas. There has been sufficient passage of time for researchers to objectively and scientifically evaluate the safety performance in the halibut and sablefish IFQ fishery, the Bering Sea/Aleutian Island pollock catcher/processor cooperative, and the rationalized Bering Sea/Aleutian Island king and Tanner crab fisheries. The safety performance for each of these fisheries was evaluated using specific metrics before and after implementation of quota-based or cooperative fishery programs. A summary of this research is as follows.

Researchers found that quota-based and cooperative fishery management regimes have a strong potential to improve safety over open access fisheries. What is of note is that the improvements were operational and behavioral in nature and they are not easily achieved by the Coast Guard's limited legislative authority over commercial fishing vessels and their crews.

Within each of the fisheries researched, we found that the fishing season lengths had increased, reducing pressure to take shortcuts on safety and allowing vessel masters the ability to avoid fishing in poor weather. Furthermore, more fishing days provided stable employment opportunities for full-time professional crews, and another improvement noted was that the fisheries proceeded at a slower pace, which resulted in reduced fatigue for crew members and higher quality product.

Fishery-specific safety improvements are as follows. In the Alaska halibut and sablefish fishery, there were measurable declines in the fatality rates and search and rescue rates after the implementation of the IFQ system in 1995. In the king and Tanner crab fishery, vessels were found to carry fewer pots, reducing overloading and capsizing lists, and most importantly, there have been no fatalities, no vessel losses, and no search and rescue cases conducted by the Coast Guard since the implementation of the crab rationalization program.

Based upon the record of safety improvements documented in other fleets, formation of the Freezer Longline Cooperative could

potentially lead to slower fishing and processing pace, increased fishing days, flexibility to allow operators to avoid severe weather, reduced fatigue among crew members, a more experienced professional crew, and finally reduced pressure to fish when the vessel and crew are not ready.

While this academic research has recorded positive results and identified a potential for safer operations in these fisheries, it is important to note that fishery management changes alone are not a panacea. There still remain very real economic pressures which can influence risk-taking behaviors by fishermen. As such, the Coast Guard believes that optimizing safety performance in the context of quota and cooperative fisheries can best be achieved through concurrent improvements in overall vessel condition and crew competencies.

Within the freezer longline fleet, 30 of 36 vessels are already enrolled in the Alternate Compliance and Safety Agreement. This program was specifically developed for this and the freezer trawler fleet and participation requires vessel owners to possess updated stability reports, conduct regular dry dockings, inspect main propulsion and electrical machinery, upgrade fire prevention systems, carry enhanced lifesaving equipment, and greatly increase crew emergency training requirements. To date the fleet has invested over \$40 million to meet these ACSA standards. The high safety standards of this program, combined with the potential safety benefits of a cooperative fishery structure, should significantly enhance safety for the 1,200 people working in the freezer longline fleet.

Last, I would like to discuss the provisions of the American Fisheries Act.

Provisions of the American Fisheries Act restrict construction of new fishing and fish processing vessels in certain Bering Sea/Aleutian Island fisheries and impose length, tonnage, and horsepower limitations on new vessels constructed in other fisheries. With the average age of fishing vessels in the Bering Sea/Aleutian Island fleet being 25 and 30 years old, these vessels are nearing the end of their service life. Given the increased safety risks associated with older vessels, safety would best be served by providing vessel owners the ability to retire aging vessels and replace them with modern vessels. In removing AFA restrictions, safety would be greatly enhanced because replacement vessels will be built to meet more stringent safety requirements, especially as it relates to watertight integrity and stability, and in the case of fish processing vessels, vessels would need to be classed and load-lined.

That concludes my testimony, Madam Chair, and thank you for this opportunity again. I would be pleased to answer any questions that you have.

[The prepared statement of Commander Woodley follows:]

PREPARED STATEMENT OF COMMANDER CHRISTOPHER WOODLEY, THIRTEENTH COAST GUARD DISTRICT STAFF, U.S. COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

Good afternoon, Madam Chair, and distinguished Members of the Committee. I am Commander Christopher Woodley, Chief of External Affairs for the Thirteenth Coast Guard District. I am pleased to have this opportunity to appear before you today to discuss Commercial Fishing Vessel Safety and the Coast Guard's safety program and initiatives.

The Coast Guard's Commercial Fishing Vessel Safety (CFVS) Program is aimed at improving safety in the commercial fishing industry, reducing the number of vessels lost, and reducing the number of fishing-related fatalities. The thrust of the existing CFVS Program is to gain compliance with the CFVS regulations through educational, voluntary, no-fault, dockside safety examinations and other outreach efforts. Regulatory enforcement is accomplished through at-sea boardings, which complement the CFVS Program. We also balance our prevention efforts with our response capabilities to minimize the consequences of the inevitable casualties that do occur.

Historically, commercial fishing has been one of the most, if not the most, hazardous occupations, in the United States. In 2006, the Bureau of Labor Statistics found that commercial fishermen and workers aboard uninspected fishing vessels died at a rate of 141 per 100,000. For comparison, the fatality rate for the towing industry, another uninspected segment of the marine industry, was 17 per 100,000 workers, and in the American workplace as a whole, the rate was four deaths per 100,000 workers.

CFVS has long been a matter of concern to the Coast Guard, but limitations on regulating the safety of commercial fishing vessels have been encountered because they are classified as "uninspected vessels." From the 1930s to the 1980s, various legislative proposals were introduced to increase safety standards for commercial fishing vessels, such as requirements for periodic safety inspections, watertight compartments, and licensing of vessel operators, but none of these proposals came to fruition.

In 1971, the Coast Guard conducted a study and cost-benefit analysis of alternative safety programs for commercial fishing vessels. The report documented the fishing industry's poor safety record and attributed it to the fact that fishing vessels, with few exceptions, have traditionally been exempted from the safety regulations required of other commercial vessels. The study recommended licensing of masters, mandatory safety standards including full inspection and certification of new vessels, and mandatory and voluntary standards combined with inspection and certification of existing vessels. The report also drew parallel comparisons to the Small Passenger Vessels Safety Act of 1956, which required structural and loading standards and inspections on those vessels and led to an 80 percent reduction in passenger deaths.

Proposed fishing vessel safety legislation based on the study was deferred until the National Marine Fisheries Service (NMFS) of the Department of Commerce (DOC) could complete a study on commercial fishing vessel insurance. In 1975, DOC recommended an alternative proposal for a voluntary safety program for fishing vessels. In July 1976, the Secretary of Transportation forwarded copies of the Coast Guard's 1971 study to the Senate Committee on Commerce and the House Committee on Merchant Marine and Fisheries, but did not recommend a legislative program, citing the inflationary impact to the economy and an increased interest in a voluntary program by the commercial fishing industry.

In 1978, the Coast Guard initiated a voluntary dockside uninspected vessel examination program. The purpose of the program was to improve safety throughout the uninspected fleet, including commercial fishing vessels. A project to develop a triennial dockside educational examination program was initiated, but was terminated in 1981.

The 1980s saw a renewed awareness of fishing vessel safety, several tragedies, and finally safety standards legislation. A Coast Guard Fishing Vessel Safety Initiative Task Force 1984 studied how fishing vessel safety could be improved, and the Task Force recommended a two-pronged approach. One part of the program promoted vessel safety through voluntary standards published in a Coast Guard Navigation and Vessel Inspection Circular (NVIC) in 1986. The standards were written primarily for fishing vessel designers, builders, outfitters, and marine surveys, and they are still referenced today. The second part of the program promoted crew safety through a safety guide developed by the Coast Guard and the North Pacific Fishing Vessel Owners' Association (NPFVOA), and both were permanently adopted by the Coast Guard Marine Safety Program in January 1987.

The House Merchant Marine and Fisheries Committee's Subcommittee on Coast Guard and Navigation held a series of hearings on marine safety in 1984, which resulted in statutory amendments defining fishing industry vessels and clarifying inspection, licensing and manning requirements for fish processing vessels.

In August 1985, the WESTERN SEA, a seventy-year-old purse-seiner with a crew of six, disappeared in the Bering Sea. Only the body of crewmember Peter Barry was recovered. After the death of their son, Ambassador Robert Barry and his wife Peggy Barry worked to galvanize safety advocates, government officials, lawmakers,

casualty survivors and families of other fishermen lost at sea to renew the campaign for congressionally mandated safety standards.

By 1987, bills were introduced to address fishing vessel safety and insurance liability. One bill specifically addressed vessel inspections, on-board equipment requirements, licensing and training of masters and crew, casualty reporting, and the establishment of a Fishing Vessel Safety Advisory Committee. A September 1987 National Transportation Safety Board (NTSB) study on "Uninspected Commercial Fishing Vessels" added support for the safety legislation being considered. The NTSB testified at hearings on their recommendations, to include minimum standards for: safety training, basic lifesaving equipment to include exposure suits, approved life rafts, emergency radios, Emergency Position Indicating Radiobeacons (EPIRBs), flooding detection and dewatering systems, fire detection, fixed fire-fighting systems, periodic inspection, prohibition of the use of alcohol or drugs when engaged in commercial fishing operations, education regarding the dangers of toxic gases in unventilated spaces, and the need for research on vessel stability.

The Commercial Fishing Industry Vessel Safety Act of 1988 (P.L. 100-424) was signed into law by the President on September 9, 1988. This resulted in the first safety legislation enacted in the United States applying specifically to commercial fishing vessels, and the Act gave the Coast Guard authority to prescribe safety regulations. The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) was formed, and in 1989, it began to aid the Coast Guard in the development of safety regulations. They were published as 46 CFR Part 28, Requirements for Commercial Fishing Industry Vessels and became effective on September 15, 1991. In 1996, some requirements for safety equipment and vessel operating procedures were modified, but actions related to immersion suit and extended stability requirements were deferred. Those pending proposals were terminated in 1998.

Pursuant to the Act, the Coast Guard began developing a plan for licensing operators of federally documented fishing industry vessels. The CFIVSAC prepared a detailed report for the Coast Guard and recommended "certification" of operators including "competency" requirements. In January 1992, "A Plan for Licensing Operators of Uninspected federally Documented Commercial Fishing Industry Vessels" was submitted to Congress. In May 1993, a revised plan was submitted. In 1996, a request was made for authority to license operators of commercial fishing industry vessels. Despite these efforts, to date no such authority has been granted.

Also as mandated by the Act, the National Research Council (NRC) conducted a study on fishing vessel safety and the need for vessel inspections. Their report "Fishing Vessel Safety—Blueprint for a National Program" was published in 1991. It was reviewed by the Coast Guard and the CFIVSAC. Several of the recommendations were endorsed including the establishment of an inspection program for commercial fishing industry vessels.

In November 1992, the Coast Guard submitted a report to Congress requesting authority to carry out commercial fishing industry vessel inspections under a three-tiered approach: (1) Allow for self-inspection of new and existing vessels less than 50 feet in length, (2) Allow for third party examination of new and existing vessels greater than or equal to 50 feet but less than 79 feet in length, and (3) Require more extensive Coast Guard inspection and load line assignment on vessels 79 feet or greater in length. In addition, the inspection plan would have required new vessels 79 feet or more in length to be designed and built to class standards, and existing vessels of that length could have additional hull and machinery standards imposed if authority was granted. As with the licensing plan, no additional authority has been granted.

In the absence of authority to inspect commercial fishing industry vessels, the Coast Guard embarked on an outreach and education program. The most noteworthy of these efforts is our voluntary dockside examination. During these voluntary examinations, a Coast Guard examiner works with vessel owners, operators and crew to explain requirements, check compliance with all Federal regulations, and when possible, assist the crew in correcting deficiencies. Any discrepancy discovered is brought to the crew's attention, but no penalties result.

In carrying out the CFVS Program, the Coast Guard established new positions that were distributed across Coast Guard Headquarters, each District Office, and all Marine Safety Offices (now Sectors) throughout the country. Several additional positions were established in the program in 1996 to assist in training Boarding Officers. To provide essential training and encourage fishermen's participation in the CFVS Program, the Coast Guard placed damage control training trailers, damage stability trainers, intact stability trainers, and EPIRB test kits at District or Sector offices throughout the country.

Aggressive safety outreach initiatives are complemented by compliance boardings at sea. Enforcement of certain critical safety and survival equipment carriage re-

quirements deter non-compliance. Vessels found to be lacking critical equipment, being operated in an unsafe manner, or otherwise characterized as having especially hazardous conditions on board, have their voyages terminated. In addition, vessels identified as high risk, as determined by regional enforcement or safety personnel, may be targeted for boardings when sighted underway.

Despite the progress as a result of the Act, the safety regulations, and various safety initiatives, the Coast Guard believes further significant risks remain. For example, in a three-week period during January 1999, four clam-fishing vessels (ADRIATIC, BETH DEE BOB, CAPE FEAR, and ELLIE-B), one conch-fishing vessel (PREDATOR), and eleven fishermen were lost. As a result of this surge of casualties, the Coast Guard convened a Fishing Vessel Casualty Task Force on January 27, 1999, that was comprised of representatives from the Coast Guard, NOAA, NMFS, NTSB and OSHA, along with industry advisors. The Task Force was charged with evaluating the circumstances of the recent accidents, examining the incidents in context of historical data for loss of life and property, providing quick feedback to the industry on the safety issues, reviewing the current CFVS Program and past recommendations that have potential for reducing loss, recommending the most significant measures that would have great potential for reducing loss of life and property, and developing direction and an action plan to be pursued by the CFIVSAC, the Coast Guard, and industry.

The Task Force issued their report in March 1999. For this report, the Task Force examined two five-year periods—one period prior to passage of the Commercial Fishing Industry Vessel Safety Act (CFIVSA) of 1988, and the second period after the safety regulations became effective in 1991. From 1984–1988, 519 lives and 1,177 vessels were lost during commercial fishing operations. From 1994–1998, 351 lives and 699 vessels were lost in the industry. This represents approximately 37 percent fewer lives and vessels lost.

The results of this Task Force indicated that the Coast Guard's CFVS Program coincided with a reduction in fishing vessel casualties. Several other factors are also believed to have contributed to the reduction in fatalities, in addition to the imposition of safety requirements. First is the reduction in the number of vessels and commercial fishing effort due to the distressed nature of the industry. Second, many fisheries management practices overseen by the National Marine Fisheries Service (NMFS) have changed to give increased emphasis on safety. The third factor contributing to reduced fatalities is partnerships with those organizations that are also concerned with safety within the commercial fishing industry. Most prominent among these partners is the National Institute for Occupational Safety and Health (NIOSH). NIOSH opened a field station in Anchorage, Alaska shortly after passage of the Act to focus on improved safety within the industry. Working with the Alaska Department of Fish and Game has resulted in a significant improvement in some Alaskan fisheries as well.

The Task Force also concluded that most casualties could be prevented and that the continued high loss rates and risk to fishermen was not acceptable. The Task Force believed it was time to go beyond the minimal standards and strive for breakthrough levels of loss reduction in the fishing industry. The report, "Living to Fish Dying to Fish," contained 59 safety recommendations divided into seven categories: Coordinate Fishery Management with Safety; Establish Operator and Crew Standards; Ensure Vessels Comply with Standards; Establish Safety and Stability Standards; Improve Program Management; Conduct Research and Development; and Inform Fishermen.

Subsequent to the Task Force findings, the CFIVSAC met at Coast Guard Headquarters to review and evaluate the Task Force recommendations. At the same time, CFVS Coordinators from each Coast Guard District, the CFVS Program Manager, and fisheries law enforcement representatives met to discuss the Task Force report. Both groups provided recommendations for implementing the immediate and short term initiatives to improve safety in the fishing industry. Many of those actions were taken, others have been initiated over the following years, and others are still being pursued. The following are key actions that have been taken since 2000.

- The Coast Guard expanded training of NMFS agents and observers on the dock-side examination program and fishing vessel safety matters and now sends representatives to Regional Fisheries Management Council meetings to promote safety concerns.
- The Coast Guard increased promotional activities on safety and survival and included fishing vessel safety programs in industry day-type activities.
- The Coast Guard expanded the role of the Auxiliary in the CFVS Program. In some areas, Auxiliary examiners account for approximately one third of examinations conducted.

- The Coast Guard established new positions in the CFVS Program and a Fishing Vessel Safety Division at the Headquarters level. The positions added CFVS personnel at each of the Regional Fisheries Training Centers, the CFVS Program staff, and numerous Marine Safety Offices (now Sectors) throughout the country.
- The Coast Guard improved casualty investigation and data analysis to support risk based decisionmaking and examines casualties for “lessons learned” to provide feedback to the industry to improve safety. Consequences articles are sent to a national industry magazine.
- The Coast Guard has developed better lines of communication with the commercial fishing industry and established a website ([www.fishsafe.info](http://www.fishsafe.info)) on fishing vessel safety items.
- The Coast Guard publishes safety information fliers, quick reference cards, and equipment requirement pamphlets for distribution to the fishermen during dockside contacts and other outreach programs. These items are being translated into Spanish and Vietnamese.
- Coast Guard examiners emphasize emergency preparedness drills as part of the voluntary dockside vessel safety examinations.
- The Coast Guard initiated “Safe Catch” programs in several regions where certain types of fisheries are known to be high risk, such as Alaska, the Pacific Northwest, and the Northeast. Under these programs, several examiners visit those port areas prior to the season opening offering safety examinations and drill training to ensure the fishermen and their vessels are ready to get underway. Vessels that do not participate can expect to be boarded during the fishery and checked for full safety and survival equipment compliance.
- The Coast Guard has submitted proposals to conduct projects for mandatory dockside safety examinations in certain regions of the country where data shows fatality rates are the highest.
- The Coast Guard is considering options for developing appropriate fishing vessel operator and crew competency standards that directly addresses casualty risk.
- The Coast Guard is considering options for developing appropriate fishing vessel safety and stability standards that directly address casualty risk. We are currently working on a regulatory project to extend stability and watertight integrity standards to new fishing vessels 50 feet or greater in length.

These improvements to the Coast Guard’s CFVS Program have increased safety and have contributed to lower fatality and vessel loss rates in the commercial fishing industry. Through increased Coast Guard presence on the docks, risk-based and regionally focused compliance boardings, and other agencies’ requirements for safety examinations, fishing vessel safety and awareness have improved. In 2000, the number of fatalities dropped to 37, over 50 percent from the 77 fatalities in 1999. We believe this was a direct result of the findings, recommendations, and safety awareness generated by the Task Force subsequent to the multiple deadly sinkings in January 1999. In 2001, fatalities spiked to 58. Most of these, however, can be attributed to one incident, the sinking of the ARCTIC ROSE which claimed 15 lives. An overview of the statistics and measures for the CFVS program for 1992–2007 are provided in Table 1.

The impact of the safety legislation and regulations, and subsequent safety initiatives can be seen in the reduction of fatality averages, but are not as significant for vessel losses. Prior to the Act passage in 1991, fatalities averaged around 120 per year. After the Act and until the Task Force in 1999, the fatality average dropped to about 76 per year. Following the Task Force to present, the fatality average has been approximately 42 per year. For the same time periods, the averages for vessel losses fell from approximately 138 to 100.

Table 1.—Commercial Fishing Vessel Safety (CFVS) Statistics 1992–1999

	1992	1993	1994	1995	1996	1997	1998	1999
Voluntary Dockside Exams	3,662	7,162	7,212	7,808	6,843	6,351	5,652	7,225
Safety Decals Issued	1,661	3,432	3,545	3,929	3,719	3,451	3,485	3,992
CFV Fatalities (Operational)	85	89	75	62	82	61	71	77
Vessel Losses (Operational)	139	148	153	117	166	138	125	123

Commercial Fishing Vessel Safety (CFVS) Program Measures 2000–2007

	2000	2001	2002	2003	2004	2005	2006	2007
Voluntary Dockside Exams	7,193	6,527	5,826	5,636	7,024	7,408	7,936	7,417
Safety Decals issued	3,294	3,681	1,846	1,880	2,518	2,500	3,204	3,063
Compliance Boardings	3,883	3,610	3,845	4,876	6,174	7,088	7,032	7,078
CFV Fatalities (Operational)	37	58	37	43	37	42	42	31
Vessel Losses (Operational)	85	133	122	107	112	99	75	61

In a more recent safety initiative, an alternate compliance and safety agreement program was developed with the industry. The Bering Sea/Aleutian Island (BS/AI) and Gulf of Alaska (GOA) freezer longliner and freezer trawler fleet, referred to as the Head and Gut (H&G) fleet, occupy a unique niche in the North Pacific fishing industry, both with regards to vessel operations and to their regulatory status as “fishing vessels.”<sup>1</sup> Unlike other catcher vessels which deliver fish in the round to shore plants, H&G vessels catch, sort, head, eviscerate, clean, and prepare fish into various fish products on board the vessel. These products are then frozen, packaged, and stored on board until offloaded. There are approximately 40 freezer longliners and 23 freezer trawlers which make up the H&G fleet. These vessels range in length from 90 feet to 220 feet.

To create fish products on board, H&G vessels have a crew complement which range from 15–55 people, with an average size of 20 crew members for H&G longliners and 35 crew members for H&G trawlers. In contrast, the crew size of a fish catcher vessel in the Bering Sea is typically 5–6 crew members. Because the H&G operation requires production, freezing and packaging of their catch, hazardous gases (anhydrous ammonia or Freon), foam insulated cargo holds, and flammable packaging materials are present on board in large amounts. Additionally, because of their ability to store frozen catch on board, these vessels can operate in the most remote areas of the Bering Sea, far from search and rescue support. These factors result in increased safety and operational risks to this fleet.

More than any other fishery in the North Pacific, the safety issues facing this fleet are inseparably intertwined with the statutory definition of “fish processing,” fishery resource management issues, and an inability to come into compliance with existing safety regulations. To address the safety problems and the other conflicts associated with the H&G fleet, the Coast Guard developed a broad-based initiative called the Alternate Compliance and Safety Agreement (ACSA).

The Coast Guard developed the ACSA initiative with extensive consultation and support from the North Pacific Longline Association, the Groundfish Forum, the North Pacific Fishing Vessel Owners Association, and numerous vessel owners and operators from the H&G fleet. The overarching goals for this initiative are to significantly improve safety in the H&G fleet in a reasonable and practicable manner. The initiatives allowed the H&G fleet to continue production of its historically important fish product lines. It integrates certain aspects of fishery management with vessel safety by taking into account the H&G fleet’s need to meet future by-catch Improved Retention/Improved Utilization (IR/IU) requirements.

Freezer longliners are referred to within the industry as longline catcher processors or factory longliners. There are 29 Washington-based freezer longliners. These vessels are primarily 120 to 190 feet in length, steel hulled, shelter decked, predominantly of schooner style, but also house forward style. Freezer longliners have limited deck lifting gear but have a characteristic starboard side hull cutout line hauling station under the shelter deck and a second cut in the stern shelter deck area for gear setting. Most freezer longliners are equipped with automatic baiting machines which enables them to bait and haul about 30,000 to 40,000 hooks per day. Below decks, these vessels are set up much like similar-size freezer trawlers with heading and gutting machines, plate freezers and lower level freezer holds for their frozen products. With one or two exceptions these vessels are not loadlined.

Freezer longliners harvest primarily Pacific cod from the BS/AI. Secondary fisheries include halibut and sablefish under the individual fishing quota (IFQ) system, and some Greenland turbot. Several vessels in this fleet also dress and custom freeze salmon during their off cod season summer period.

A typical vessel in this fleet is corporate owned and has a fair market value of \$3.5–\$6.0 million. This fleet is fairly stable in numbers although substantial ownership changes have occurred over the past several years due to financial problems of some vessel owners. Revenues realized by this fleet likely reached a low point in

<sup>1</sup> A fishing vessel is defined in Title 46 United States Code (USC), Section 2101 (11a) as a vessel “commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.”

1998 due both to depressed Asian market prices for headed and gutted frozen cod and reductions in Bering Sea cod catch quotas. The economics of this fleet have improved. This fleet is very single species dependent and would be adversely impacted by further reductions in cod catch quotas. Freezer longliner cod fisheries begin January 1, extend into April or May, then start again September 15 and carry into November or December. Secondary fisheries for Greenland turbot typically follow the spring cod fishery. In-port time for freezer longliners is primarily in the late spring to early September and in the late fall to mid-December. This fleet uses Fishermen's Terminal, but at a modest level due to their long season and yard schedules.

Freezer trawlers homeported in Washington and conducting groundfish fisheries in Alaska number 19 vessels. Freezer trawlers are primarily 130 to 200 feet in length, steel hulled, stern ramp trawlers rigged with one or two gantries and on-deck lifting gear much as catcher trawlers. Below the fishing deck is the fish processing deck with plate freezers where their catches are headed, gutted, cleaned, sized and frozen in blocks each weighing about 400 pounds. Below the processing deck are the freezer holds capable of storing 200–500 metric tons of frozen product. Off loads are primarily to freighters for export of their product to Japan and Korea, but also include offloads shore side to freezer vans for domestic and European markets. Freezer trawlers harvest primarily flounders like yellowfin sole, rock sole, flat-head sole, and Dover sole, as well as Atka mackerel and a variety of rockfishes.

A typical freezer trawler is corporate owned and has a fair market value of \$5.0–\$8.5 million. The freezer trawler fleet is stable in number of vessels, moderately to well maintained and is economically viable but somewhat economically depressed at present. Revenues realized by this fleet have fallen by more than 20 percent in the past 5 years due primarily to the state of the Asian economies coupled with the closure of some of their best fishing grounds for protection of Bering Sea crab and Steller sea lions. The economics of this fleet are heavily tied to Asian exports and to the Asian economy. Freezer trawler revenues in the next 5 years will likely remain somewhat depressed due to the combination of competing supplies of headed and gutted fish from Russian waters harvested by Japanese and Korean vessels. Also, bycatch restrictions imposed on this fleet in Alaska to protect crab and halibut are likely to become more restrictive.

Freezer trawlers fisheries are spread out over about 9 months per year. Their operations begin January 20 and typically wind down in October. Their in-port times are primarily late October through early January. During this period some freezer trawlers moor at NW Dock 2, for repairs and re-provisioning. Overall, this fleet's use of the Fishermen's Terminal is fairly limited to shipyard work during their limited lay-up period.

Commercial fishing off the coasts of California, Oregon and Washington pose a concern to the Coast Guard's safety program. The fatality rate in this region is about double the national rate, with the Dungeness crab fishery having the highest rate. Most of the fatalities occur as a result of their vessels capsizing or sinking. A large percentage of fatalities also occur from falls overboard. Weather conditions and large waves are contributing factors in these casualties, as well as lack of use of lifesaving equipment. The Coast Guard has stepped up initiatives to educate fishermen on the hazards they may face, ensuring they have the required safety equipment and are trained in its use, and is seeking to examine vessels before the fishing seasons.

In an effort to improve safety throughout the commercial fishing industry and in all regions of the country, the Coast Guard is trying to reach more fishermen. Compliance with the safety regulations is required, but participation in Coast Guard programs and dockside examinations is voluntary. The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) for Commercial Fishing Vessel Safety on March 31, 2008. The proposed changes would further enhance safety by adding new requirements for, but not limited to: stability on vessels 50–79 feet; maintenance and self-examination; safety and other training; drill conductors on board; survival suits in seasonally cold waters, and documentation of maintenance, testing, and training performed. The Coast Guard is seeking comments on the need for and the impact of the rules being considered on the industry and individual fishermen.

The Administration, including the Coast Guard and NMFS, strongly support improvements in the safety of fishing vessels and fishing operations. NMFS is responsible for ensuring that fisheries management promotes safety. With a reauthorized Magnuson-Stevens Fishery Conservation and Management Act, NMFS has the authority to promote safer fishing operations in several ways: (1) better focused assessments of the safety impacts of management measures, (2) stronger safety requirements of our observer program, (3) limited access privilege programs that improve safety, (4) financial incentives that reduce the costs of safety upgrades, and (5) col-



laboration with other agencies in negotiations paving the way for eventual ratification and entry into force of an existing international agreement on fishing safety. We believe that continued progress in vessel standards and fisheries management is the most practical and comprehensive strategy for achieving sustainable improvements in safety at sea.

In summary, the Congress, Commercial Fishing Industry Vessel Safety Advisory Committee, commercial fishing industry, NMFS, and the Coast Guard have all worked to improve safety on commercial fishing vessels, but there is still much work that can be done. We are continuously improving our response posture and capabilities so as to minimize the consequences when vessel casualties do occur.

Thank you for this opportunity to discuss commercial fishing vessel safety. I will be pleased to address any questions that you may have.

Senator CANTWELL. Thank you, Commander Woodley, and thank you to all the panelists.

Actually, Commander Woodley, I think I am going to start with you. Do you know, is there a safety record for the fleet overall?

Commander WOODLEY. For the longline fleet, ma'am?

Senator CANTWELL. In general.

Commander WOODLEY. Yes. The Coast Guard does track safety at a district level, individual casualties, both major casualties such as vessel loss or loss of personnel, down to individual casualties such as loss of propulsion, loss of electrical, things like that. So, yes, we do track all of that.

Senator CANTWELL. So do you put a grade to it or how do you determine—

Commander WOODLEY. With the Bering Sea/Aleutian Island freezer longline fleet, the fleet actually has a very good safety record as compared to other fisheries. Their primary problem is man overboard, followed by occasional industrial accidents that happen in the factory and are matters of ocean jurisdiction. But then you also have the rare but very high risk potential of vessel loss such as the fishing vessel *Galaxy* where you can lose numerous crew very quickly, and that was actually the reason the Alternate Compliance and Safety Program was put together, was to prevent those catastrophic casualties.

Senator CANTWELL. Is that where we should be directing our attention? Is that what you are saying?

Commander WOODLEY. Yes, ma'am.

Senator CANTWELL. In all the safety issues, you think where the Coast Guard or all of us should be directing our attention is relation to man overboard or—

Commander WOODLEY. Man overboard is a big problem nationally, but I think that is probably one of the most difficult issues to solve. The focus again that we looked at for the Bering Sea and the Alternate Compliance and Safety Program was looking at the issue of vessel loss and preventing that through preventative measures such as new stability reports, hull inspection, dry docking, things like that.

Senator CANTWELL. So where does vessel replacement fit into that?

Commander WOODLEY. Vessel replacement fits into that in that because you have older vessels, as these vessels get older, they tend to incur more safety problems over time. It gets more expensive to maintain them. So building new vessels with the new safety requirements that are required as part of the Fishing Vessel Safety Act would significantly upgrade the safety of those boats.

Senator CANTWELL. So how would you rank that then? Something that is important to get done? I mean, you said you had this compliance program for safety and management.

Commander WOODLEY. Yes, ma'am. In the context of the Bering Sea/Aleutian Island fisheries, that is one of the top priorities of the Thirteenth District is to get all those vessels through the program.

Senator CANTWELL. So I am asking where does vessel replacement fit into that? Is it an addition and—

Commander WOODLEY. Yes.

Senator CANTWELL.—desperately needed or is this program working well?

Commander WOODLEY. I think ultimately because the Alternate Compliance Program is an alternative program to class and load line, the goal for the—I am speaking particularly of the fish processing vessels—would be to get new vessels in there. That is where your highest risk is. That is where the most people are on board, and that is the Coast Guard's focus. We would like to see those boats.

Senator CANTWELL. Better vessels.

Commander WOODLEY. Yes, ma'am.

Senator CANTWELL. It is part of the consideration. OK.

Ms. Hughes, in your experience, do you believe that we need more stringent safety regulations?

Ms. HUGHES. My perspective on that is that what we have got from the Fishing Vessel Safety Act of 1988 was pretty much the closest thing we will see to a one-size-fits-all regulatory package, but it is not really looking at prevention. It predominantly addresses emergency response. So I think we need to collectively be looking at more preventative measures. For instance, in the vessel rebuild issue, a safe platform is one of the key elements that you want. You want to keep people out of the water. That is when their risk is the greatest.

Another interesting statistic is that the National Institute of Safety and Health, NIOSH, their Alaska field office did a study of the casualties, which they track very closely in Alaska. The casualty rate in the commercial fishing industry between 1999 and 2006 was reduced by 51 percent, which is really significant. So I think that—

Senator CANTWELL. By reducing the race for fish you are saying.

Ms. HUGHES. Well, that is certainly a definite part of it for the fisheries that were rationalized during that period of time. There are a lot of factors that actually have to play together to really get a safety culture and make the improvements.

Senator CANTWELL. So what further practices do you think that we need to do in vessel replacement?

Ms. HUGHES. I think that when I answered your question before, it was really that we need Coast Guard oversight. If you look even around the country, nationally the Coast Guard's oversight of the industry varies dramatically, and in some areas it is virtually nonexistent. So what we have had with District 13 and District 17 and largely the work of Commander Woodley is some initiatives that absolutely were factors in the reduction of the casualty rate.

Senator CANTWELL. Commander Woodley, would you like to respond to that?

Commander WOODLEY. Madam Chair, the major reduction that Leslie spoke of as measured by NIOSH was in the Bering Sea/Aleutian Island crab fleet from 1999 through 2005 where the Coast Guard implemented at-the-dock stability checks prior to the start of the red king crab and opilio crab fisheries. The Coast Guard came into the ports of Dutch Harbor, St. Paul, and King Cove and examined the vessels as they were loading their boats to make sure that they were not overloading because what we found in our company analysis through the 1990s was that was the primary cause of vessel loss, was overloading boats, boats operating fully loaded in poor weather and icing conditions. And by going on board and spot-checking boats and making sure they were not overloaded and also making sure that all the proper lifesaving equipment was on board and functional, not only did we prevent casualties, but when the rare casualties did occur, they had the proper safety equipment and were able to get rescued.

Senator CANTWELL. Dr. Sanchirico, is there more that we should be doing on fishing management that would help in the safety regime area?

Dr. SANCHIRICO. I think that this hearing and moving rationalization forward throughout the country is the way to achieve most of the safety gains that we have heard about today. And so as much as this Committee can do that, I think that is the way we need to go to address the safety issues. There is just no way in a race for fish that safety concerns will rise to the level necessary that we think they should as a society. There is just too much competition for that catch. And so once you remove the race to fish with rationalization, then you will see the slower pace of fishing and the gains associated with that in safety.

Senator CANTWELL. So, Ms. Hughes, before you were starting to talk about the longliner issue and whether you think that would be a good management system for more safety in that particular area.

Ms. HUGHES. Positively. They are the last major fishery in Alaska that has not been rationalized. For instance, in the Bering Sea pollock fleet, the requirement for that group to form a cooperative was at the 80 percent level, and right now the members in the Longline Coalition would be 94.4 percent, with just two vessels not in favor of that. So it would seem reasonable to me that they should not necessarily be held to a higher standard than the pollock fleet. If 80 percent was acceptable for them, it would seem reasonable for this group as well, given the benefits.

Senator CANTWELL. And how about—I do not know if you are familiar, but there is a Coast Guard bill in the House of Representatives as well that is considering safety inspections twice every 5 years, required safety training and implementation of vessel construction standards. Have you reviewed that legislation? Do you have any thoughts on that language?

Ms. HUGHES. Right, yes. Of course, the devil is in the details. But there are certainly a lot of positive aspects to that House bill. There are some that I do not honestly know what the real repercussions would be nationally to take some of those down to a 50-foot length vessel. That would be best left to naval architects and class societies.

Senator CANTWELL. Commander Woodley, do you have any comments about that?

Commander WOODLEY. The Coast Guard supports the section 307 provisions of House bill 2830, but as Leslie said, there are a lot of issues in the details of how it would work out. And we would have to be careful to avoid inadvertent consequences.

Senator CANTWELL. We have not talked about—I mean, we are talking about safety from a whole variety of perspectives, obviously, training and vessels and management policies. But Dr. Sanchirico, if you could talk about the environmental impacts of fisheries management and cooperatives. Are we getting something additionally?

Dr. SANCHIRICO. There are a couple areas where slowing down the race for fish, addressing the rule of capture incentives has environmental benefits. First, it is how the total allowable catch is set, where total allowable catch is the catch on fishing in these systems. And so, for example, in some of the New Zealand fisheries that I have studied, when they went into the individual fishing quota system, they had significant reductions in the TAC's. Since that time, those stocks have since recovered, and what we have found is that those fisheries actually turned out to be the most profitable or have seen the greatest increases in profit in the New Zealand system. In other words, there is an important link between the ecological sustainability and the economic return, the profitability of a fishery.

Second, the slower pace of fishing is completely consistent with a reduction in habitat damage. For example, in the New Zealand red snapper fishery, they went from a trawl fishery, which was a frozen product, to a fishery that sells into the live fish market. As a result, the fishery is being harvested by very different types of gear, and one that is much more minimizing in terms of its potential habitat damages.

With respect to by-catch issues, we have seen discussions in the literature about potential reductions in levels of by-catch on rationalized fisheries. British Columbia groundfish fisheries has some of the most work done there.

And finally, as I touched on in my testimony, the creation of wealth in these fisheries creates stewardship incentives, and we have seen these incentives manifest around the world. For instance, there are examples in Iceland where the cod fishery under an individual fishing quota system lobbied the government to close spawning areas that were currently open to fishing. We have the same sort of experiences in New Zealand where the industry turned around and lobbied for creation of marine reserves or closures in particular areas or moved their fishing at different times of the year to avoid spawning aggregations. So we see it through multiple dimensions, but it goes back to ending the race for fish, allocating shares to the catch and creation of wealth that ensues.

Senator CANTWELL. Well, thank you very much. I want to thank the panelists. We have a second panel that I want to get to only because I have been handed the note that we are probably going to have another vote at 4 o'clock. So I thank you for your patience, as I said earlier, and if you would be open to any other questions

we might submit to you for the record. We appreciate your timely answers to those.

So now we will call up the second panel, if we could. Mr. John Bundy, President of Glacier Fish Company; Mr. Mike Hyde, Advisor for American Seafoods Group; Ms. Donna Parker, Director of Government Relations for Arctic Storm; and Mr. David Frulla, Partner at Kelley Drye, representing the Fishing Company of Alaska. Welcome to all of you. Thank you for being here today.

As with the previous panel, if you could keep your remarks to 5 minutes. We are, obviously, willing to accept longer testimony for the record, but to give us time to get through the second panel, that would be much appreciated. It looks like we are going to start with you, Mr. Bundy. We appreciate you being here, as well as many of the other people from the panel traveling from the other coast to be here in Washington, D.C.

**STATEMENT OF JOHN BUNDY, PRESIDENT,  
GLACIER FISH COMPANY ON BEHALF OF THE  
FREEZER LONGLINE COALITION**

Mr. BUNDY. Madam Chair, thank you for having this hearing. My name is John Bundy. My perspective is as President of the Glacier Fish Company and having recently completed 9 years on the North Pacific Council. Glacier is based in Seattle, owned by two families principally and in addition by the Norton Sound Economic Development Corporation which represents 15 member communities of over 8,400 people in the Bering Strait region of northwest Alaska.

Glacier owns and operates two trawl pollock vessels, now three, and two freezer longline vessels.

I am going to talk about first the freezer longline proposal. I am testifying on this matter for the Freezer Longline Coalition.

The members of the coalition are the owners of 34 of the 36 vessels authorized by the council to participate in the freezer longline sector of the Bering Sea cod fishery. This fishery is the first cod fishery in the world to receive certification from the Marine Stewardship Council as sustainable, but under the current fishery management plan, it is still a race for fish, resulting in substantial safety concerns and unnecessary waste.

Fishery cooperatives and other forms of rationalization are not new management concepts to West Coast fisheries. The freezer longline cod sector is the last remaining major fishery yet to be rationalized in the Bering Sea.

You have already heard, I think, compelling testimony today about voluntary harvest co-ops being superior management tools for safety and numerous other reasons. The benefits of those co-ops are summarized by the State of Washington in its letter of support and also the Environmental Defense Fund in its letter of support. They include a list: improved safety, reduced ecosystem impacts, increased product quality and supply to consumers, removal of incentives for overcapitalization, improved financial stability. Fishing in a co-op will allow the fleet to slow down and choose better weather. No longer will the skipper and crew feel compelled to start on January 1 regardless of ice and storm conditions.

The problem that we have is that a voluntary harvest cooperative requires 100 percent agreement for the simple reason that a non-member is free to continue racing for the entire quota. Over 4 years now, our sector has worked to establish a cooperative with 100 percent approval, but has failed in that respect because one company has refused to participate. Faced with this type of situation, Congress in the AFA adopted the approach that we advocate here: define a subpool of the quota which reflects what the non-joiners would reasonably be expected to harvest under current conditions and let them race for it and leave the remainder to the co-op to be managed by the council and the National Marine Fisheries Service.

The legislation proposed by the coalition would not in any manner lessen the council's authority to manage the cod fishery. It would simply provide a basic tool, modeled on the AFA, that would allow formation of a voluntary harvest cooperative.

Support for this also comes from the State of Washington which states in its letter, "The Department"—"Department" referring to the Department of Fish and Wildlife—"is strongly in support of cooperative fishing efforts for the Washington and Alaska based fleets," supported the recent actions by the Council in restructuring the cod fishery, and the department expected that the freezer longline sector would be able to form a voluntary cooperative as a result of the Council's action.

But now it appears that without Congressional action, the race for fish will continue. And we respectfully ask the Members of the Subcommittee to act by introducing legislation that would provide the fleet a basic tool to form the co-op.

Now, in the little bit of time I have left, I am going to comment also on the AFA rebuild issue. Really, the first panel pretty much covered my arguments. So let me just mention a couple of things sort of, I guess, defensively.

The question has been asked, since those restrictions are in the AFA, why do you not stick by your deal? The answer is that when we, the pollock industry, did the AFA, it was pretty much an experiment. We did not know exactly what would be the outcome of the AFA in terms of rationalizing the fisheries. The offshore, for example, had to be able to form a voluntary co-op, which they were able to do. And in fact, every single vessel in the pollock industry, over 200 of them, ended up in co-ops. So the legislation was very effective in rationalizing that fishery, and now we have a known entity. And for that reason, the restrictions really no longer make sense because we know what we have.

And only two concerns have been raised that I am aware of. One is, will allowing the vessels to modernize themselves and to rebuild or replace somehow upset the co-ops and upset the rationalization and the achievements that we have achieved? The answer is that the co-ops have simply proven so valuable that they are going to be staying there, and NMFS certainly supports them. And the entire industry, all sectors of the industry, supports the ability to rebuild or replace as needed.

The second concern that I have heard is that perhaps with bigger vessels or greater technology, there would be a spillover effect into other fisheries. That will not happen because the AFA itself has

built in a number of restrictions preventing pollock vessels participating in other groundfish fisheries. This legislation, as passed by the House twice, would even add more restrictions so that, for example, if a vessel is replaced, the old vessel must exit from all fisheries in the U.S.

So I will end with that. Thank you, Madam Chair.  
[The prepared statement of Mr. Bundy follows:]

PREPARED STATEMENT OF JOHN BUNDY, PRESIDENT, GLACIER FISH COMPANY ON  
BEHALF OF THE FREEZER LONGLINE COALITION

Thank you, Madame Chairman and Members of the Subcommittee, for the opportunity to testify. I am John Bundy, president of Glacier Fish Company. Based in Seattle, Washington, Glacier Fish Company is principally owned by two Seattle fishing families and the Norton Sound Economic Development Corporation (NSED). NSED is a private nonprofit corporation representing 15 member communities and over 8,400 people in the Bering Strait Region of Northwestern Alaska. NSED is one of six Community Development Quota (CDQ) organizations. I have a broad perspective of fisheries management issues in the North Pacific having recently completed 9 years of service on the North Pacific Fisheries Management Council (Council) on which I was one of three voting members appointed by the Governor of the State of Washington.

Glacier Fish Company owns and operates three trawl catcher/processor vessels that participate in the Bering Sea Alaska pollock fishery. Two of those vessels are eligible as well to participate in the catcher/processor sector of the west coast Pacific whiting fishery. Our company also operates two freezer longline vessels that participate in the Bering Sea/Aleutian Island (BSAI) Pacific cod fishery.

I am here to testify today in favor of two issues being considered by the Subcommittee. The first issue is a legislative proposal to facilitate the formation of a fish harvesting cooperative for the freezer longline sector of the BSAI Pacific cod fishery. The second issue is a provision in the House-passed Coast Guard reauthorization bill, H.R. 2830, relating to the replacement, rebuilding and retirement of vessels identified in the American Fisheries Act (AFA) as eligible to participate in the Bering Sea pollock fishery. This provision was also included in the Coast Guard reauthorization bill in the 109th Congress, which passed the House, but was not taken up by the Senate.

**Freezer Longline Cooperative Proposal**

I am testifying on this matter as a Board member of the Freezer Longline Coalition and on its behalf.

The members of the Coalition are the owners of 34 of the 36 vessels authorized by the Council to participate in the freezer longline sector of the BSAI cod fishery. Our members are united in their commitment to sustainable fishing practices evidenced by the fact that our fishery is the first cod fishery in the world to receive certification from the Marine Stewardship Council (MSC) as sustainable, eco-friendly and well-managed. The MSC certification is the most widely recognized and respected mark for sustainable well-managed fisheries. The certification requires that a team of independent scientists investigate and find the fishery resource to be healthy, not in danger of being overfished, and harvested in a sustainable manner. The Coalition is committed to improving fishing practices and ensuring the productivity and sustainability of the Pacific cod resource.

I would like to provide the Committee a brief overview of the freezer longline fleet and how it operates in the Pacific cod fishery. The fleet consists of 36 vessels that catch, process, freeze and package fish on board the vessel while at sea. The vessels use specialized longlines with individually baited hooks to catch the resource. Each line is set and hauled every day; the fish are individually taken off the hook and flash frozen within a matter of hours. This method of fishing allows the operators to maintain the highest quality level. The use of longlines also allows the fleet to make important adjustments in selective gear and bait methods to avoid bycatch, ensuring not only the health of the cod fishery but of the other fish species in the marine ecosystem. In addition, the fishing methods employed by the freezer longline sector are very low impact, minimizing damage to the ocean floor and interaction with corals, plant life, and other marine life.

While the Freezer Longline Coalition is extremely proud of its sustainable and low impact fishing practices, it still has concerns regarding the management of the fishery. Under the current fishery management plan, there is a "race for fish" resulting

in substantial safety concerns, unnecessary waste of the fishery resource, and environmental consequences that could be avoided by cooperative harvest behavior. Because the fleet is over-capitalized, the total harvesting capacity is greater than the available quota of cod. This results in extremely short seasons with operators racing to maintain or increase their “share” of the catch within the short time allowed before the quota has been caught. We refer to this as the “Olympic system” because the incentives inherent in a common pool of fish causes vessel owners to concentrate their efforts and investments on catching and processing the maximum amount of cod that their vessels can handle in the shortest possible time. This practice requires vessel operators to take safety risks and naturally leads to waste. Under the “race for fish,” vessel operators must fish in weather conditions that jeopardize vessel safety. Many less valuable parts of the cod fish are often discarded along with other bycatch to make room in the hold for more valuable products so the vessels can continue fishing as long as possible. Fishing crews often throw excess provisions and bait over the side to make room for a few more cases of cod before the season ends because if not harvested now the cod will be “lost” to that vessel operator.

The formation of a cooperative in this sector would eliminate the waste inherent in the “Olympic System.” Providing this sector with tools to voluntarily fish cooperatively will mean that vessel operators can slow down their harvest rates with the knowledge that they will still be able to catch their share of the resource. The members of the cooperative will convert energy and investment previously used only to maximize the daily catch of cod to improving safety and maximizing the value of their share by increasing yield and quality of all products and species caught. Operating in risky weather will no longer be an economic necessity. Far less will go to waste. We know that recovery rates in some rationalized fisheries have been increased by as much as 50 percent and bycatch rates have been cut by 40 percent. By operating in a cooperative structure, vessel safety will be enhanced and our members will become even better stewards of the resource because they will have a greater long-term vested interest and better tools to manage it sustainably.

Fishery cooperatives and other forms of rationalization are not new management concepts to West Coast fisheries. In fact, the freezer longline Pacific cod sector is the last remaining major fishery yet to be rationalized in the BSAI region of the North Pacific. A cooperative for the freezer longline Pacific cod sector will be similar to other successful voluntary harvest cooperatives currently in place, including numerous BSAI Pollock cooperatives implemented under the American Fisheries Act (AFA), the offshore cooperative in the Pacific whiting fishery off the coast of Oregon and Washington, cooperatives in the BSAI flatfish trawl fisheries, a cooperative in the Gulf of Alaska rockfish fishery, and numerous cooperatives formed in various BSAI crab fisheries. A voluntary harvest cooperative for our Coalition members will provide the same public and private benefits as experienced by these other rationalized fisheries.

The benefits of a voluntary harvest cooperative are numerous. The support letter from the State of Washington Department of Fish & Wildlife sums it up well:

- (1) improved safety at sea, (2) reduced impacts to the ecosystem, (3) stronger support for sustainable fishery management, (4) increased product quality and supply to consumers, (5) removal of incentives for overcapitalization, and (6) improved financial stability for participants in the cooperative.

Fishing in a cooperative will allow the fleet to slow down the fishery and choose better weather in which to fish. No longer will the skipper and crew feel compelled to start at midnight on January 1 regardless of storm and ice conditions. A slower pace will allow the crew more time to rest and provide greater job stability by extending the fishery over most of the year. The fleet can be more selective in fishing operations which will help to reduce incidental bycatch of non-target species and have less fishing impact on the environment. Capital investment to enhance a vessel's prospects in the “race for fish” will be converted to technology to enhance the value of the fishery, reduce waste and lower fuel consumption and the fleet's carbon footprint.

A voluntary harvest cooperative requires 100 percent agreement because non-members in the same sector are free to continue to race for the entire quota. Over the last four and half years, the fishermen in the freezer longline Pacific cod sector have worked to establish a cooperative with 100 percent approval of the fishery participants. However, despite all of the proven benefits of a cooperative, one company with two of the fleet's 36 vessels has decided it does not want to participate. Faced with this situation, Congress in the AFA adopted the approach we advocate here: define a sub-pool of the quota which reflects what the non-joiners would reasonably be expected to harvest and let them race for it; and leave the remainder for the vol-



untary harvest cooperative to manage under supervision of the Council and National Marine Fisheries Service.

The legislation proposed by the Coalition would not grant any resources to any individual, vessel or company. It would not in any manner lessen the North Pacific Council's authority and responsibility to manage and conserve the BSAI cod fishery, or to make new or different allocations in the future. It would simply provide a basic tool modeled on the AFA that would allow formation of a voluntary harvest cooperative.

Specifically, it would provide that if 80 percent or more of the fleet wishes to form a voluntary harvest cooperative, NMFS will divide the total cod quota for the sector into two parts based on historical vessel harvests in a reasonably recent set of years. The cooperative would then manage the part equal to the collective catch history of its members, and parties wishing to continue the derby style of fishing would be free to do that by accessing the collective catch history of the non-cooperative members.

The owners of all but two of the 36 fishing vessels in our fleet have signed an agreement to form a voluntary harvest cooperative. There is broad support for the cooperative form of management from other West Coast commercial fishing groups and harvest cooperatives, as well as fishery management agencies and financial institutions that provide support for the fleet. All six Alaska Community Development Quota (CDQ) groups, representing 65 Alaska Native coastal communities, support legislation that will permit the formation of a voluntary harvest cooperative, which will provide additional resources for needed economic development in rural western Alaska. The Environmental Defense Fund, fisheries scientists and safety organizations all support this outcome, as does the State of Washington. In its letter of support, the Director of the Washington Department of Fish & Wildlife states:

The Washington Department of Fish and Wildlife is strongly in support of cooperative fishing efforts for the Washington and Alaska based fleets operating in Federal waters off the coast of Alaska. . . . WDFW supported the recent actions of the . . . Council in restructuring the Pacific Cod fishery in the Bering Sea and Aleutian Islands (Amendment 85), and expected that the Freezer Longline sector would be able to form a voluntary cooperative as a result of the Council's action.

But formation of a voluntary harvest cooperative has been stymied by a single company. The need for a resolution is urgent. The fishing seasons for Pacific cod continue to shorten, creating uncertainty for the industry and loss of stable work. This year's "A" season was the shortest on record, as was the year before that, and the year before that. As fuel prices increase and the Pacific cod allocation drops to its lowest point in recent years, participants are forced into an increasingly dangerous race for the fish. Captains and crews fish around the clock, sometimes without sleep and without regard to bad weather, to catch as much of the resource as quickly as possible before the fishery is closed. The race for fish encourages risk-taking behavior and is wasteful. Our sector needs the tools necessary to form a voluntary harvest cooperative to slow down the fishery and stabilize the industry.

For more than 4 years, in a transparent process open to all, our group has tried its best to include everyone in a voluntary agreement to form a harvest cooperative, but it now appears that without congressional action the race for fish in the Pacific cod longline sector will never end. On behalf of all the members of the Freezer Longline Coalition I respectfully ask the members of the Subcommittee to act quickly in introducing legislation that provides the fleet with tools needed to end the derby style race for fish in the BSAI freezer longline cod fishery.

The freezer longline sector of the Pacific cod fishery has a long and positive history of working with fisheries managers and Congress to promote sustainable fishing practices. Leaders in the fleet have supported Council and Congressional actions to eliminate the race for fish, minimize bycatch, and reduce capacity. Establishment of a voluntary harvest cooperative is a vital step in this progression, and important to the ongoing health of the resource and safety of the fleet.

#### **American Fisheries Act Vessel Amendment**

The AFA vessel amendment in the House Coast Guard reauthorization bill provides a vessel owner the discretion to replace, rebuild or retire an AFA-qualified vessel when there is a business case to do so. This proposal updates current law that prohibits the replacement of any AFA-qualified Bering Sea pollock fishing or fish processing vessel except in the calamitous "event of the actual total loss or constructive total loss" of the vessel. Current law further limits the flexibility of a vessel owner by essentially requiring that any such replacement vessel not exceed the length, tonnage and engine horsepower of the original vessel. Coupled with an exist-

ing regulatory regime that essentially limits the rebuilding of an existing vessel to its current length, vessel owners are restricted to business plans adopted in the 1980s when virtually the entire fleet of Bering Sea pollock catcher, catcher/processor and mothership vessels entered the fishery.

As explained below, the AFA vessel provision updates current law to promote efficiency, including energy efficiency, and enhanced utilization of fishery resources. The provision is intended to promote international competitiveness for U.S. fishers and processors in the largest and one of the most important U.S. fisheries. This provision will not result in overcapitalization of the pollock fleet nor will it have adverse conservation impacts. In fact, it could further reduce fleet capacity and provide conservation benefits by reducing the environmental footprint of the fleet.

The AFA provided a three-sector split of the Bering Sea pollock fishery and identified either by vessel name or qualifying criteria the vessels eligible to participate in each sector. While the Act treats each sector of the pollock fishery (onshore, mothership and catcher/processor) somewhat differently, the Act contemplated that a fish harvesting cooperative, or cooperatives, would form within each of the three sectors, and that proved true. Fish harvesting cooperatives establish individual pollock allocations among cooperative members that yield a number of benefits, including removing any incentive for employing fish harvesting and fish processing capacity beyond what is needed to optimize catching and processing of the allowable quota.

The Bering Sea pollock fish harvesting cooperatives established a decade ago are an unqualified success. The cooperatives have achieved measurable conservation benefits, resolved overcapitalization concerns, and resulted in economic and social stability for fishery participants. These improvements are the direct result of ending the “race for fish.” In considering the AFA vessel amendment, the first public policy question to be addressed is whether allowing AFA-qualified vessels to be replaced at the owners’ discretion and without size restrictions will undermine fish harvesting cooperatives and spark a return to a race for fish. The answer is clearly “no.” The efficiencies achieved through individual allocations in terms of reducing operating costs and increased revenues from optimized utilization of the resource are so significant that the cooperative structures in the Bering Sea pollock fishery will be preserved at all costs.

Continuation of the cooperative structure is ensured by other safeguards as well. For example, the contractual cooperative agreement among catcher/processor sector participants requires unanimous consent among co-op members to dissolve the co-op. In short, the smallest company or the company with the oldest and least efficient vessel, or vessels, has a veto against dissolution of the catcher/processor co-op. With regard to the catcher vessel fleet, the AFA provides a formula for allocating pollock individually among qualified vessels, so there is no incentive to replace or rebuild vessels to catch fish faster since individual allocations are fixed in the law. Vessel operators support the AFA vessel amendment because it will allow them to operate more efficiently within the current co-op structure.

AFA vessel operators are seeking the amendment as a necessary means to maximize the value of their individual fish allocations and reduce costs. While the Alaska pollock fleet consists of safe and seaworthy vessels, almost all of the 19 AFA-qualified catcher/processors, three at-sea processing mothership vessels, and roughly 100 catcher vessels were either built, or converted from some other use, to pollock fishing and fish processing vessels between 1980 and 1990. The restrictions in current law regarding when a vessel can be replaced and to what size inhibit further improvements in fleet performance.

With respect to the catcher/processor fleet, the larger at-sea processors have onboard factories equipped to produce two primary product forms derived from the flesh of the fish—fillet and *surimi* products. *Surimi* is a minced fish product used to make imitation crab and other analog products. Larger at-sea processors can also accommodate machinery for producing fish meal and fish oil from inedible portions of the pollock (skin, bones and viscera.) Although it has a variety of uses, pollock fish meal is most often sold for fish feed in aquaculture operations. Fish oil, which is a byproduct of the fish meal production process, is used in boilers onboard the vessels as a substitute for diesel fuel and has the advantage of achieving both cost savings and lower emissions in generating energy.

Smaller at-sea processing vessels, however, are limited primarily to employing fillet making equipment, which limits product marketing flexibility. Space limitations in the factory also preclude making fish meal and fish oil from which vessel operators can derive additional revenue and reduce costs. Increasing vessel size, which the current AFA does not allow for vessels over 165 feet in length, is the only option for vessel operators seeking to enhance utilization and derive more value from their assigned quota. Increasing vessel size also allows for increased onboard cold storage

capacity. The more product that can be frozen and stored onboard the vessel at any one time reduces the number of trips to shore for offloading, which increases efficiency and reduces fuel costs.

Passage of the amendment will also help safeguard family wage fishing and fish processing jobs. Removing vessel size restrictions that inhibit, or preclude, investments in new technology and value-added processing equipment helps U.S. fishing operations compete better against lower foreign labor costs. If our freezer holds are filled with relatively unprocessed fish, value-added processing will be performed in China or other countries with low labor costs. We can keep these manufacturing jobs in the U.S., however, if we have the latitude to configure our vessels to take full advantage of state-of-the-art processing technologies.

For a catcher vessel, increasing vessel size allows for greater fish hold capacity. Greater fish hold capacity means fewer trips are needed to catch an individual's quota limit, which again means reduced fuel usage and greater efficiency. The AFA vessel amendment also contains a provision that allows for the retirement of less efficient or older catcher vessels. Currently, as implemented, the AFA requires the owner of a qualified catcher vessel delivering to an inshore cooperative to provide evidence that the vessel holds a valid fishing permit before the National Marine Fisheries Service (NMFS) issues that vessel's annual pollock allocation. As a result, a fleet owner with a less efficient vessel, or vessels, who aggregates his or her catch allowances and fishes them on more efficient vessels must still moor, maintain and insure vessels that are no longer operating in the fishery. The same circumstance applies to vessel owners leasing their annual quota to be harvested by owners of other AFA-qualified catcher vessels. The AFA vessel amendment allows for AFA-qualified vessels to be retired and for the owners of such vessels to assign the quota to another vessel or vessels. Importantly, any retired AFA-qualified vessel must surrender its fishery endorsement ensuring that it cannot fish in any other U.S. fishery.

A second public policy question to be answered is whether allowing AFA-qualified vessels to be replaced or rebuilt without constraints on size will have negative effects on other fisheries. The answer is "no." The AFA already imposes significant restrictions on participation by AFA-qualified vessels in other fisheries. The AFA vessel amendment adds more restrictions. As noted above, any replaced vessel forfeits its fishery endorsement, which disqualifies the vessel from participating in any other U.S. fishery. The amendment also prohibits any replacement catcher vessel—regardless of whether or not the vessel increases its size—from harvesting fish in any region other than the North Pacific, except for the west coast Pacific whiting fishery. The AFA already imposes this limitation on the three AFA-qualified motherships and 19 catcher/processors. Any AFA-qualified rebuilt vessel that increases beyond its current size will also be prohibited from harvesting fish in any region other than the North Pacific, except for the Pacific whiting fishery. Within the North Pacific region, any AFA-qualified replacement vessel or rebuilt vessel that increases in length beyond the vessel length specified on its current groundfish license would be prohibited from fishing in the North Pacific's Gulf of Alaska management area. In sum, the AFA vessel amendment further reduces opportunities for vessels from the Bering Sea pollock fishery to "spillover" into other U.S. fisheries.

The Alaska pollock fishery has a number of strengths. Fish stocks are healthy and robust. The fishery has undergone an independent environmental audit and been certified as sustainable by the World Wildlife Fund-backed Marine Stewardship Council. The value of the Alaska pollock fish products at the primary processing stage is nearly \$1.0 billion annually. As one of the largest fisheries in the world, Alaska pollock competes strongly in the very competitive global whitefish commodity market. Alaska pollock products are high quality and in strong demand in the U.S., Japan, U.K. and EU markets, among others. Passage of the AFA vessel amendment will provide U.S. fishers and fish processors the flexibility to optimize operations, promote fuller utilization of the resource, increase operational efficiency, and maintain international competitiveness.

Thank you for the opportunity to testify today on these two important issues. I will be pleased to answer any questions that you or other Subcommittee Members might have.

Senator CANTWELL. Thank you, Mr. Bundy.  
Mr. Hyde, thank you for being here.

**STATEMENT OF MICHAEL HYDE, ADVISER,  
AMERICAN SEAFOODS GROUP**

Mr. HYDE. Good afternoon, Madam Chairman. Thank you for the opportunity to speak to the Committee today.

My name is Mike Hyde. I am appearing on behalf of American Seafoods Company. American Seafoods Company is based in Seattle. We have 7 of the 20 eligible AFA catcher/processors. We also have three freezer longline vessels that target cod. We have processing operations in Alabama and Massachusetts. We have 28 individual owners and 2 CDQ group owners. The CDQ groups own more than half the company and benefit over 9,000 residents in 21 different communities.

My personal involvement in the North Pacific fisheries has been extensive, more than 30 years. I have been a deckhand, a Federal observer, a vessel owner, a lawyer, a fisheries manager. From 1998 through 2005, I served as the President of American Seafoods Company and was intimately involved in the negotiation of the American Fisheries Act and the Pollock Conservation Cooperative, the cooperative that governs the catcher/processor sector of the Bering Sea pollock fishery.

My plan is to focus today on one aspect of the American Fisheries Act. It is the harvesting cap that was imposed as part of the legislative language of the cap. In order to talk about our position on that, it might be helpful to describe a little bit of background of the American Fisheries Act.

When that act was passed, American Seafoods was the dominant player in the pollock fishery. We had 16 vessels, all but 2 of which we had acquired through acquisition of other companies. We were 100 percent foreign owned, and there was great concern that because of loopholes in the Americanization requirements, that we would continue to be foreign owned and we would continue to get significantly larger.

So as part of the American Fisheries Act, a provision was included that said no single company can harvest more than 17.5 percent of the directed pollock fishery. That was intended to keep American Seafoods at the level it was anticipated it would have at that point.

The act also included directions to the North Pacific Council to look at these caps and to impose a processing cap on the pollock fishery.

That is how we get to where we are today. We have a processing cap that the council adopted of 30 percent, and we continue to have a harvesting cap of 17.5 percent.

This leads to significant inequities between American Seafoods and our other major competitors, Trident Seafoods and Nissui and Maruha, because those companies are allowed to continue to process up to 30 percent, but effectively, because we only can process what we catch, we are limited to 17.5 percent. In the ensuing years since the passage of AFA, we have watched these other competitors continue to grow while we have remained relatively static.

Another issue that the harvesting cap creates for us is because it is described as a percentage of the pollock quota, the amount that we can process each year fluctuates greatly. The harvest of Alaska pollock has ranged anywhere from under a million tons to

over a million and a half tons. Because we are limited to 17.5 percent of that, the amount that we can catch and process and deliver to our customers varies significantly year after year, just another issue that faces American Seafoods and its owners that is not faced by our major competitors.

When you look at these sorts of restrictions, you have to say, why do we have restrictions? In general the approach is that you should not have restrictions on operating and economic efficiencies on companies unless you can show that there is a demonstrated need. So far, we have not seen that demonstrated need. We have tried to address some of the concerns that have been raised. One of them is that if American Seafoods is allowed to get bigger, we will take fish from other companies.

The response is simple. We cannot take fish from other companies. We have a rationalized system, and the only way American Seafoods can get more fish is if it is able to purchase it from other companies. There has to be a willing seller on the other side.

I have addressed the other arguments that we have heard in my written testimony.

The last issue that I would like to focus on proposed is the issue of linkage between the different amendments to the American Fisheries Act. There are three proposals that are on the table right now.

The first one would allow replacement of existing American Fisheries Act vessels. We have heard testimony about the benefits of doing that, and we agree that there are substantial potential benefits. In the American Fisheries Act catcher/processor fleet, though, safety is not one of those benefits. Nearly all the vessels are classed and all the vessels are load-lined. I do not believe there is any safety issue that our fleet faces that can be addressed through a new vessel that has not already been addressed on the existing vessels.

As Ms. Parker's testimony points out, the real issue here is efficiency of the vessels. American Seafoods has a fleet that is phenomenally efficient compared to our competitors, and the replacement vessel proposal would allow our competitors to build vessels that are significantly more efficient than the American Seafoods vessels. The ramifications of that to us are that we are very dependent on our CDQ fisheries. Ms. Parker has quoted some numbers in her written testimony. While the actual percentages quoted are incorrect, she is correct about the trend. American Seafoods is heavily dependent on the CDQ fisheries. The reason that we have such a large share of those fisheries is because of the efficiency of our vessels. All of that is at risk if we allow replacement vessels to come in that are more efficient than the American Seafoods vessels.

In summary, I think the three things that are being proposed in connection with the American Fisheries Act all make sense, but they really have to be done as a package to be fair to all the players in the industry.

Thank you.

[The prepared statement of Mr. Hyde follows:]

## PREPARED STATEMENT OF MICHAEL HYDE, ADVISER, AMERICAN SEAFOODS GROUP

Good afternoon, Madame Chairman and Members of the Subcommittee. My name is Mike Hyde and I am testifying today on behalf of American Seafoods Group with respect to the harvest cap restrictions in the American Fisheries Act. I will also be pleased to respond to questions about other issues related to North Pacific fisheries. As background, American Seafoods is a Seattle based company that owns seven of the twenty catcher processors authorized under the AFA to operate in the catcher processor sector of the Bering Sea pollock fishery. It also owns three freezer longline vessels that operate in the Bering Sea Pacific cod fishery and it operates land-based processing plants in Massachusetts and Alabama. The Company employs over 1900 individuals and is owned by a diverse group of 28 individual owners and two Alaskan Community Development Quota ("CDQ") groups representing 21 western Alaska communities and their more than 9000 residents. I have been involved in North Pacific fisheries for over 30 years as a deckhand, Federal observer, vessel owner, lawyer and vessel manager. I served as the President of American Seafoods Company from 1998 through 2005 and was intimately involved on behalf of the Company in the negotiation of the American Fisheries Act and the formation of the Pollock Conservation Cooperative.

**1. American Fisheries Act History**

The American Fisheries Act (the "AFA") was adopted in October, 1998 after months of intense negotiation among industry participants, state and Federal regulators and Congressional staff. Four primary goals of the AFA were: (1) Americanization of vessel ownership, (2) reallocation of pollock to shoreside operations, (3) rationalization of the Bering Sea pollock fishery and (4) reduction in the size of the overcapitalized catcher processor fleet. In addition, the AFA included a number of fishery protection measures.

In October, 1998, American Seafoods was the largest participant in the pollock fishery and was 100 percent Norwegian-owned. It had expanded aggressively from its original two catcher processors to sixteen vessels through the acquisition of competing companies. Because of State Department concerns about investment protection obligations between the United States and certain foreign nations, the Americanization provisions in the AFA were modified from initial drafts to exempt certain foreign-owned companies from the Americanization requirements (section 213(g)). This revision gave rise to concerns that American Seafoods would remain foreign-owned and continue to grow aggressively. In part to address this concern, section 210(e) (Excessive Shares) was added to the draft AFA. Section 210(e)(1) imposed a limit on the amount of pollock that could be harvested by any one entity:

Harvesting. No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

The referenced percentage was the approximate amount of the directed pollock fishery that American Seafoods was anticipated to receive in the negotiations to establish the Pollock Conservation Cooperative, the cooperative that rationalized the catcher processor sector of the Bering Sea pollock fishery. This harvesting limit effectively stopped the growth of what was thought at the time to be a foreign-owned pollock harvesting company (as noted American Seafoods is now 100 percent U.S. owned).

In contrast, section 210(e)(2) of the AFA addresses pollock processing (as opposed to harvesting) and provides in part:

Processing. Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery.

At its October 2000 meeting, the North Pacific Council took final action on the pollock processing cap. The Council analyzed a range of possible caps at 10 percent, 20 percent and 30 percent. After extensive staff reports, public comment and Council discussion, Council members agreed that there was no compelling evidence of any benefit to be gained from a processing cap. The feeling of the Council members is reflected in the statement of Council member Bob Penney:

Being big ain't always bad . . . You need big at the times of low, you need the flywheel of stability, companies that can tough it out. In times of good times, nobody likes big, but you like them when it's low because they're in it for the long haul, they have to stay, they bring stability. Now, we don't know for sure

what's going to affect this cap, what's going to come out of it. But those people have the capital, they can't quit, they have to stay and they become like a flywheel in times of down markets. So don't think of good times, think of down times, you need big in bad times.

Although the sentiment of Council members was that no processing cap was necessary, the Council acknowledged the mandate from Congress in the AFA and adopted the highest cap in the range that it analyzed, a processing cap of 30 percent.

## 2. Issues

As a general principle, governmental restrictions on economic and operating efficiencies of private companies should be limited to circumstances in which a need for a restriction is identified and the proposed restriction is fair and equitable and addresses the identified need. American Seafoods believes that the current harvesting cap fails to meet either of these criteria and should be raised to at least match the current processing cap.

### *a. Harvesting vs. Processing Caps.*

As mentioned above, the North Pacific Council members examined in great detail the need for processing caps and based on their conclusion that no need had been identified, set the pollock processing cap at 30 percent—the highest level they had analyzed. We believe that if the Council had examined the need for a pollock harvesting cap, the Council would have reached the same conclusion and these two caps would be equal. Unfortunately, because the harvesting cap was established by Congress before the Council acted on the processing cap, the two caps are not the same and create a very unequal playing field between catcher processors and other processors.

The only sector of the Bering Sea pollock fishery in which the American Seafoods vessels are allowed to operate is the catcher processor sector. Catcher processors are vessels that perform exactly as the name implies: they catch fish and process them directly onboard. Because the only source of pollock for a catcher processor is the fish that it catches itself, its operations will always be limited by the lower of any applicable harvesting or processing cap. This has created the inequitable situation in the Bering Sea pollock fishery that American Seafoods is limited to harvesting and processing a maximum of 17.5 percent of the directed pollock catch while large competitors such as Trident Seafoods, Nissui and Maruha can effectively control the harvesting and processing of up to 30 percent of the directed pollock catch.

In the mothership and shoreside sectors of the pollock fishery, processors insure the delivery of pollock to their processing plants through the restrictions on the movement of catcher vessels that were included in the AFA, through delivery restrictions in each of the coop agreements and through private contracts directly with those catcher vessels that the processors do not already own. The harvesting cap does not restrict the amount those companies process because, in contrast to catcher processors, motherships and shoreside processors simply arrange for third parties to catch and deliver those amounts of pollock that if caught by their own boats would cause them to exceed the 17.5 percent harvesting cap.

For all Bering Sea processors (including catcher processors), the important statistic is not how much fish you catch but how much fish you process. The majority of processed pollock is sold in export markets and the strength of a company in international markets is significantly dependent on the volume of processed fish it controls. American Seafoods competes with a large handicap when Trident, Nissui and Maruha can control up to 30 percent of the Bering Sea pollock and American Seafoods has access to only 17.5 percent of the directed pollock fishery plus those amounts of the CDQ pollock allocation that the Company can lease from CDQ groups.

### *b. Operating Stability.*

The harvesting cap limits any company to harvesting a maximum of 17.5 percent of the directed pollock fishery. Because this cap is set as a percentage rather than as a fixed amount, it causes unreasonable restraints on American Seafoods' ability to maintain a steady business operation. The total allowable catch of pollock in the Bering Sea fluctuates widely. In recent years, the quota has ranged from a low of less than 1.0 million metric tons to a high of nearly 1.5 million metric tons. When the quota is near the top of the cycle, nearly all of the AFA-eligible catcher processors are used in order to provide the necessary capacity to harvest the quota. On the other hand, when the quota is near the low end of the cycle, all operators could benefit from the option to harvest and process the fish through quota lease arrangements aboard the most efficient vessels in the fleet, most of which belong to Amer-

ican Seafoods. However, because the harvest cap limits the percentage of the pollock quota that American Seafoods can harvest, when the quota drops, so does the limit on American Seafoods which forces the less efficient vessels to continue operations.

In addition to reducing the overall operating efficiency of the fleet, the harvesting cap works to reduce economic efficiency and market stability. To achieve the highest prices and create stable relationships, a supplier needs to be reliable. While shore-side and mothership processors have no effective limit on how much they process, American Seafoods' production varies widely year to year. Given the opportunity, in low quota years American Seafoods would lease quota at market rates from the less efficient operators who could maximize their gain by leasing quota. However, the current harvesting cap makes that impossible. This leads to less efficient vessels operating in the reduced pollock fishery, depriving both American Seafoods and the owners of the less efficient vessels from maximizing operating and economic efficiencies.

*c. Concerns?*

It is natural to expect companies that hope to acquire additional quota to oppose the lifting of restrictions that handicap only their competitors. If a statutory restriction removes American Seafoods from the quota marketplace, thereby allowing a competitor to purchase quota at a reduced value, it is predictable that the competitor will hope to maintain that restriction. What is unclear is whether there are legitimate reasons to maintain the harvesting cap at its current level. Because we have not heard publicly from opponents of raising the harvesting cap, I will address those concerns that have been described to us in meetings with Congressional staff.

1. *American Seafoods will drive us out of business.* In an Olympic style race for fish, the least efficient operators are always at risk of being hurt by the most efficient operators. However, in the rationalized pollock fishery created by the AFA, each company operates with its individual quota and the most efficient operators pose no risk to others. If the harvest cap is increased, American Seafoods cannot unilaterally impact any other company's quota. In order for American Seafoods to purchase or lease additional quota, there has to be a willing seller on the other side of the transaction and any company that is not a willing seller will not be impacted.

2. *American Seafoods will purchase all available quota.* History has proven that this concern is not warranted. Since implementation of the AFA, the owners of four of the seven catcher vessels that received allocations of catcher processor quota under the AFA have been sold. The quota amounts on each of these vessels was small enough that American Seafoods could have purchased them and remained under the harvesting cap. In fact, American purchased only one of these four vessels and it was the one with the smallest quota. The other three vessels were all purchased by separate catcher processor companies.

3. *A larger American Seafoods will drive down market prices.* This argument reflects just the opposite of what is likely to occur in the event of a larger American Seafoods. Of the four major processors in the Bering Sea pollock industry, American Seafoods is the only one that is not heavily vertically integrated. Vertically integrated companies such as Nissui or Maruha are not hurt by lower commodity prices because they can make up the loss they incur on lower priced raw materials upon the sale of higher margin finished goods. American Seafoods does not have that opportunity and therefore has the motivation to demand the highest possible prices for its processed pollock. These higher market prices then benefit not only American Seafoods but other smaller processing companies and even the fishermen to the extent they are paid based on revenues to the pollock processor.

*d. AFA Amendment Package.*

Industry participants have proposed three amendments to the AFA. Each proposed amendment is intended to provide vessel owners with new flexibility to improve the efficiencies and economics of their operations. However, each of the three proposed amendments is likely to benefit only a subset of AFA participants. The replacement vessel provision is likely to benefit only those owners with the least efficient vessels. For companies such as American Seafoods, whose vessels are already among the most efficient vessels in the fleet, it is actually a competitive disadvantage to allow others to build new and more efficient vessels. American Seafoods harvests a large percentage of the CDQ pollock because its vessels are already highly efficient, giving it both the capacity and the financial strength to pay high CDQ lease rates. This competitive advantage will be lost to any new replacement vessels. The inshore permit stacking provision will be a huge benefit to vessel owners who



will be allowed to combine quotas on a limited number of vessels and retire their least efficient vessels but it will benefit only participants in the inshore sector and does not even extend to the catcher vessels in the other two pollock sectors. Although the increase in the harvest cap will apply to all companies, realistically, only those companies that are at or near the current harvest cap are likely to benefit.

Each of these three provisions provides relief from unnecessary restrictions and should be supported. However, it is critical that they be supported as a package so that the benefits of any AFA amendments are spread equitably among all of the AFA participants. This balanced approach is consistent with the approach taken when the AFA was originally enacted and should be continued in any AFA amendment package.

In summary, the current harvest cap has created an unequal playing field that has unfairly disadvantaged American Seafoods. It has created economic and operating inefficiencies that are not producing offsetting value. We respectfully ask that this committee look favorably on legislation to increase the AFA harvesting cap as part of a balanced AFA amendment package.

Thank you for your time. I am pleased to answer any questions.

Senator CANTWELL. Thank you for your testimony.

Ms. Parker, welcome. Thank you for being here. We look forward to your testimony.

**STATEMENT OF DONNA PARKER, DIRECTOR, GOVERNMENT AFFAIRS, ARCTIC STORM MANAGEMENT GROUP**

Ms. PARKER. Thank you, Madam Chair, and thank you for the opportunity to testify today.

My name is Donna Parker. I represent Arctic Storm, a company based in Seattle. We have two catcher/processors and two catcher vessels with long histories in this industry. All four of them are AFA-qualified.

I am going to speak on two issues. One is in support of modernization of the fleet through rebuild and replacement, and the other is in opposition to increasing the excessive harvesting share cap.

In support of the modernization, Congress passed the American Fisheries Act for a number of reasons, but primarily to resolve chronic overcapitalization of the Bering Sea pollock fishery. And there were two components to that that AFA provided a tool box to solve. One was the buyback. Another was a formation of co-ops.

There was a lot of uncertainty surrounding these. It was unknown whether the co-ops would form. It was unknown whether the buybacks were sufficient. For that reason, there were constraints put in on the rebuild and replacement of these vessels so that we would not have a huge capitalization problem all over again.

As those before me have testified, AFA has been a remarkable success. The co-ops have formed. The buyback was successful. And so what we have now are older vessels that have to compete in a world economy with one hand tied behind their backs. I will give you an example. A 30-year-old Cadillac, marvelous vehicle, kept in prime shape by replacing parts in a race across the country with BMWs, Audis, and Mitsubishis. It is going to get there. Everyone will arrive safely, but it will be a lot more expensive in terms of gas and the repairing of parts along the way.

I will give you a couple of examples for our own vessels. The Arctic Fjord is 285 feet compared to the Arctic Storm, which is 325. That difference causes a difference of 650 tons of freezer hold capacity, which means the Fjord has to leave the fishing grounds five

times more than the other boat. That is a quarter a million gallons in extra fuel. That increases our costs.

Additionally, a fish oil plant, which would supplement our diesel fuel 1,200 to 2,500 gallons a day, needs additional space.

Additionally, a fish meal plant, which turns fish waste into fish food, and increases our recovery rates from 2.5 to 5 percent is not possible unless we can do a rebuilding of our vessels, an increase in size if necessary.

So again, allow us to compete in the world marketplace. The overcapitalization will not occur because of the success of AFA, and the spill-over effects, as Mr. Bundy said, have been constrained on other fisheries in Alaska, other fisheries in the United States. So we urge you to support that.

In regards to the excessive share cap, as I said, Americanization, overcapitalization, and reallocation were primary purposes of the American Fisheries Act. What it was is really a course correction. The Magnuson-Stevens Act was passed in 1976. One of its primary purposes was to Americanize the fishery. But that is not what happened. What happened is that within a matter of 10 years, there was extreme overcapitalization. Too much of it went offshore. Too much of it went to foreign ownership. AFA was a course correction which set limits on that, required Americanization, shifted 15 percent of the offshore to the inshore through the buy-out provision, as well as a reallocation, and changed the ownership requirements.

What that did is allowed, through that buy-out, a transition. It established a cap, as Mr. Hyde said, at 17.5 percent. And American was really the poster child for all that, a very efficient organization, but it was very large, very offshore, very foreign. So it was capped at this.

When the processing cap was established inshore, there were only six inshore companies as opposed to 130 harvesting vessels. So it is really apples and oranges. There is nothing constraining American from increasing its processing shares or increasing its CDQ. American, because it is large, because it is more competitive, has been able to increase its CDQ share, and they can increase it more.

But there are three issues at stake here.

One is this does not apply just to American Seafoods. We are talking about them because they are raising the issue. It applies to all participants. And if the harvesting share were to match the processing share, then all the shore-based processors could buy all their catcher vessels, and the more that they buy, the less competitive and the less ability of the individual catcher vessels to survive.

Furthermore, as I said, they are unconstrained. They can purchase more CDQ.

And finally, if 30 percent or something like is the number, what you are really saying is four players can control the largest fishery in the United States. So the real question is putting too much of the fishery into too few hands. What do you want it to look like? Do you want independent catcher vessels? Do you want multiple players? At some point, big is too big and the smaller players are marginalized and unable to compete.

So, for instance, in our company where we have primarily five families that own the boats, and they are passing it on to their gen-

erations, is it going to be marginally able to compete, or is it going to put it at a disadvantage and end up in a situation where it sells to a corporation? So do you want families or corporations owning the fishery?

Thank you very much.

[The prepared statement of Ms. Parker follows:]

PREPARED STATEMENT OF DONNA PARKER, DIRECTOR, GOVERNMENT AFFAIRS,  
ARCTIC STORM MANAGEMENT GROUP

Madame Chairman, Members of the Committee:

Thank you for the opportunity to appear before the Members of the Subcommittee and to provide testimony on these important fishery issues. I am Donna Parker, the Director of Government Affairs for Arctic Storm Management Group. Arctic Storm is based in Seattle, Washington and operates four commercial fishing vessels in the North Pacific and West Coast fisheries. Two of the vessels are catcher-processors that harvest and process seafood and two are catcher vessels. All four vessels have a long history of participation in the development of these fisheries and all four are American Fisheries Act (AFA)-qualified vessels that participate as members in AFA pollock fishing cooperatives.

I am here to testify today on two issues of interest to this Subcommittee. My first comments are intended to speak in strong support of amending the American Fisheries Act (AFA) to promote vessel safety and the economic competitiveness of the Alaska pollock fishery by providing vessel owners with discretion to replace, rebuild or retire an AFA-qualified vessel. The focus of my other comments will be in opposition to amending the AFA excessive harvesting share cap. There has been an attempt to link these two issues which we believe is without merit.

**Support Amendment to Replace, Rebuild and Retire AFA Qualified Vessels**

Congress passed the American Fisheries Act (AFA) in 1998, principally, to resolve chronic overcapitalization in the Nation's largest fishery, the Bering Sea (BS) pollock fishery. The AFA included a buyback of certain fishing vessels and created a framework that allowed the three industry sectors—onshore, mothership and catcher/processor—to form fish harvesting cooperatives for the purpose of “rationalizing” the fishery. Rationalizing fisheries means ending the often wasteful race among fishery participants to catch as much of the available quota as quickly as possible.

Uncertain whether the vessel buyback program and formation of fish harvesting cooperatives would succeed, Congress included an additional measure intended to address excess capacity. The AFA included strict limitations on replacing vessels identified in the Act as eligible to participate in the BS pollock fishery.

The AFA has proven to be an unqualified success. The vessel buyback provisions and the fish harvesting cooperatives instituted in all sectors of the fishery have resolved overcapitalization in the fishery. The fish harvesting cooperatives are primarily responsible for resolving overcapitalization as they effectively remove any incentive to employ fishing capacity beyond what is needed to catch the allowable fishing quota in a deliberate, economically rational manner.

*Removing Unnecessary Restrictions on Vessel Replacement Promotes Safety, Efficiency and International Competitiveness*

Under current law, the AFA permits the replacement of an AFA-eligible vessel only in such limited instances where a qualified vessel is rendered an “actual total loss or constructive total loss.” The Act should be amended to allow AFA-qualified vessels to be replaced at the owners’ discretion. Because of the AFA’s success in rationalizing the BS pollock fishery, restrictions on replacing or improving vessels, including arbitrary limits on vessel length, tonnage or engine horsepower, are no longer necessary.

Most AFA vessels were built in the 1980s. Confining their operations to business plans and technology available thirty years ago does not make sense in a global economy. In any modern business, in order to remain competitive you have to operate efficiently. Under the current restrictions of the AFA, vessel owners are often constrained by space limitations that force them to operate less efficiently. For instance, smaller boats are constrained in their ability to operate both surimi and fillet lines to meet the needs of the market and the appetites of the U.S. consumer. Space limitations also constrain the ability to install fish meal plants that allow full utilization of the fishery byproducts, fish oil plants that convert fish waste into a substitute for diesel fuel, and increased cargo hold capacity which reduces the amount of trips required to unload the vessel.

For instance, one of our catcher-processors, the Arctic Fjord packs 920 tons of finished product while the larger, Arctic Storm, packs 1540 tons. That difference in capacity forces the Fjord to make five additional trips a year to and from the fishing grounds to unload product using approximately 220,000 gallons of fuel. At current costs of \$4.20/gallon, these trips increase operating costs substantially. It also contributes to unnecessarily extending our carbon footprint at a time when reduction of carbon usage has been identified as a high priority. Related to that issue is needed space to construct a fish oil conversion plant. Use of fish oil to fuel a catcher-processor is expected to offset diesel fuel consumption by 1,200 to 2,500 gallons a day. Like several other AFA catcher-processors, the Arctic Fjord is not large enough to accommodate construction of a fish meal plant without rebuilding the hull. Fish meal plants turn fish waste into fish food for aquaculture operations in Asia. It also increases our recovery rates by approximately 2.5 to 5 percent of round weight.

For a catcher vessel, increasing vessel size allows for greater hold capacity and so reduces the number of trips needed to harvest its catch quota. The proposed amendment also contains a provision that allows for retirement of less efficient and aging vessels. Currently, AFA requires that the owner of a catcher vessel delivering to a shoreside cooperative maintain that vessel and permit in order to receive its annual allocation of pollock. The AFA vessel amendment allows AFA-qualified catcher vessels to be retired and for the owners of such vessels to assign the quota to another vessel or vessels. To avoid negative impacts to other fisheries, any retired AFA-qualified vessel must surrender its fishery endorsement and so cannot participate in other U.S. fisheries.

Because current regulations prevent us from replacing our existing vessels, we must replace parts of the vessels piece by piece as they wear out. We are forced to figure out how to make these hulls last forever without the opportunity to take advantage of more efficient technology available to our industry. While the AFA fleet is operated and maintained to ensure maximum safety conditions, it seems counter to the promotion of the safety of human life at sea, as called for in National Standard 10 of the Magnuson-Stevens Act, to prohibit AFA-eligible vessels from being replaced or efficiently rebuilt using state-of-the-art technology and architectural designs that can simultaneously accomplish premium safety and efficiency.

The arbitrary limits on length, tonnage and engine horsepower of replacement vessels stipulated in the AFA are unnecessary. To help foster safety, product quality, innovation and efficiency—all of which contribute to Alaska pollock producers remaining competitive in the international whitefish market—it is critically important to remove limitations in current law on replacement of AFA-qualified vessels.

*The Success of Fish Harvesting Cooperatives Demonstrates That There Will Be No Adverse Fishery Management Impacts from Removing Restrictions on Replacement Vessels*

The fish harvesting cooperatives in the BS pollock fishery made possible by the AFA are an unqualified success. Under the cooperatives, qualified fishermen enter into contractual arrangements specifying each individual's share of the catch. Fishing and processing then proceeds in the most efficient manner to enhance utilization and maximize the value of harvested fishery resources. Prior to passage of the AFA, the BS pollock fleet could catch the entire year's quota in approximately 90 days. Since 1998, the length of the fishing season has doubled. In the catcher-processor sector, although 19 vessels are eligible to participate in the fishery, each year three or four of the less efficient vessels remain in port. The Pollock Conservation Cooperative (PCC)—the catcher-processor sector fish harvesting cooperative—reports that due to the deliberate pace of fishing and use of the most efficient vessels, *the fleet is producing nearly 50 percent more fish products per pound of fish harvested* than what the fleet achieved under the pre-AFA “race for fish” system. Removing unnecessary restrictions in the AFA on replacement vessels will allow for more improvements in this area.

There are also demonstrated conservation benefits of cooperative fishing. While the mid-water trawl Alaska pollock fishery has always ranked as one of the world's “cleanest” fisheries, under the fishing cooperative less than 0.5 percent of what is harvested is discarded. Prior to formation of cooperatives, discard rates were somewhat higher. Eliminating the “race for fish” has allowed fishermen to target market-sized pollock, utilize more of any incidental catches of non-target species, and to institute voluntary bycatch reduction programs to minimize incidental catches of non-target species.

It is also important to note that there will be no effects on other fisheries as a result of removing restrictions on replacing or improving AFA-eligible vessels. The AFA provides for strict limits on participation by AFA-qualified fishing vessels in other fisheries, and this proposal increases those safeguards. For instance, any re-

placed vessel is prohibited from participating in any fishery outside the North Pacific and the West Coast hake fishery. And any rebuilt or replaced vessel that increases its length would be prohibited from fishing in the Gulf of Alaska. Any retired AFA-qualified vessel must surrender its fishery endorsement ensuring it cannot fish in any other U.S. fishery. In this way all other fishery participants in the U.S. are protected from enhanced efficiencies gained by replaced, rebuilt or retired AFA vessels.

In sum, the AFA has succeeded in removing excess capacity from the BS pollock fishery. The advent of fish harvesting cooperatives has removed any incentive for increasing fishing effort and created opportunities for maximizing utilization of fishery resources. We urge that the overly restrictive replacement vessel language of AFA be amended to enable Alaska pollock producers to meet national fishery policy objectives of promoting the safety of life at sea and to enhance efficiency and international competitiveness in the Nation's largest fishery.

#### **Oppose Amendment of the AFA 17.5 percent Excessive Harvesting Share Cap**

The AFA has been remarkably successful in stabilizing the Bering Sea pollock fishery, once marred by bitter allocation battles that devalued the fishery and hurt all participants as well as the U.S. consumer. When the AFA was enacted in October 1998, it provided the tools to accomplish four primary goals; Americanization, decapitalization, reallocation and rationalization. During detailed negotiations each of these goals were balanced in order to make the others possible. One of the key provisions was to reduce the dominance of American Seafoods which had grown from three to 16 vessels in 8 years. Some of these vessels were financed and built in Norwegian shipyards. They were among the largest and most modern vessels built during the late 1980s and so contributed to the over-capitalization of the Bering Sea pollock fishery during the 1990s.

The AFA authorized a \$90 million payment to American Seafoods to permanently remove nine of the 16 vessels from the fishery reducing its historical harvest share to 17.5 percent. The Federal Government paid American \$20 million and the remaining \$70 million is a federally guaranteed loan still being paid off by catcher vessels participating in the inshore fishery. This action accomplished two goals; it reallocated an additional 10 percent of the pollock fishery to the inshore sector and it reduced the dominance of a single company in the Nation's largest fishery. While other companies could have offered vessels for sale under this arrangement, it made most sense for American to offer its most inefficient vessels for sale in exchange for keeping its most efficient vessels. To its credit, participation by American in this arrangement was a critical ingredient to the successful negotiation of AFA.

To ensure future balance and diversity in the industry, an excessive harvesting share cap of 17.5 percent was installed as a key feature of the AFA. American Seafoods now proposes to increase the harvesting cap and has argued that this increase is linked to the proposed amendment which would allow AFA vessels to rebuild, replace or retire aging AFA vessels. The rationale for this linkage is unclear but seems to focus on two issues.

The first issue is concern that if AFA vessels are allowed to become more efficient, some participants may have an incentive to terminate the Pollock Conservation Cooperative (PCC) and return to a race for fish. This issue was remedied when members of the PCC agreed to require unanimous consent by all members to terminate the coop. This means, the offshore catcher-processor cooperative which allocates harvest shares among members could not be terminated unless all participants agreed to it. In this way American Seafoods and all other members would not be put at risk of losing its share of pollock due to modification of the AFA rebuild and replacement provisions.

The second issue seems to be concern that in setting the 17.5 percent cap, American was allowed to operate the most efficient fleet. In allowing other vessels to modernize, the argument seems to be that American is losing its competitive advantage and should be compensated by allowing it to increase its market share. In other words, if American Seafoods is unable to increase its market share, the remaining fleet should not be permitted to effectively compete in the world marketplace.

*Importantly, these arguments have failed to persuade most AFA participants to support an increase in the harvest share cap, including other companies that are either approaching the cap or are currently limited by the cap. Most participants feel that, in allowing the pollock fleet to modernize, the proposed amendment to rebuild and replace vessels levels the playing field rather than disadvantages any one participant.*

It should also be noted that in owning 17.5 percent of the pollock fishery harvesting capacity, American controls 40 percent of the offshore sectors allocation. Additionally, American also harvests most of the Community Development Quota (CDQ) which is not subject to the harvesting cap. The CDQ quota comprises 10 percent of the Bering Sea pollock fishery. Before AFA, American harvested only 5 percent of the CDQ quota. Today, it harvests about two-thirds of the CDQ quota. In so doing, it has increased its total harvesting share to about 23 percent of the Nation's largest fishery.

For our company and others, this issue is simply one of putting too much control in the hands of too few. At some point, a much larger company puts smaller companies at a significant disadvantage and destabilizes the fishery. For the Bering Sea fishery, that point has been established at 17.5 percent of the harvesting capacity. The majority of Bering Sea participants have not been persuaded that a compelling reason exists to change that excessive share limit. We continue to believe that a cap set at 17.5 percent is a critical part of the AFA package and, if increased, may destabilize the fishery. We do not believe updating AFA vessel rebuild and replacement requirements will destabilize the pollock fishery or disadvantage any one company. These are two separate issues and should be treated separately. Specifically, the safety and efficiency of the entire AFA fleet should not be jeopardized by the desire of a single company to exceed the current harvest share limit.

Finally, American Seafoods is an efficient and well managed seafood company. After passage of the AFA, American was quick to comply with Americanization of its ownership. It has diversified its operations nationally and internationally. It is a well-respected participant in the pollock fishery. Our comments have focused only on American Seafoods insofar as it is the only company to request an increase in the excessive harvesting share cap.

Thank you again for the opportunity to testify on these fishery issues. We urge you to support the proposed amendment that will allow pollock fishery participants to rebuild, replace and modernize our fleet so that we can successfully compete in the global marketplace. We also urge that you keep the excessive harvesting cap in place to protect the current balance and diversity that benefits most participants in the fishery as well as the U.S. consumer.

This concludes my comments.

Senator CANTWELL. Thank you very much.

Mr. Frulla, thank you very much for being here. We look forward to your testimony.

**STATEMENT OF DAVID E. FRULLA, PARTNER, KELLEY DRYE & WARREN, LLP, ON BEHALF OF THE FISHING COMPANY OF ALASKA**

Mr. FRULLA. Thank you, Madam Chair. Good afternoon. My name is David Frulla. I am here testifying today on behalf of a Seattle-based fishing company, the Fishing Company of Alaska, or FCA. I am a partner in Kelley Drye & Warren, LLP, resident in our Washington, D.C. office. Since 2006, we have served as counsel to FCA for certain regulatory and lobbying matters, including the legislative proposal for a freezer longline cooperative and the vessel replacement issues that are before the Subcommittee today. I will address both issues, including by offering fair solutions consistent with existing law.

Detailed written testimony has been submitted for the record.

By way of background, FCA was the first to begin freezer longlining operations for Pacific cod in the Bering Sea in the late 1980s.

Unfortunately, the fishery sector has become overcapitalized despite efforts by NMFS and the North Pacific Council to cap and reduce capacity and to protect historic participants. The council implemented a vessel moratorium in 1995, a license limitation program in 2000, and then a fisheries endorsement requirement in 2002. Congress authorized a buyout in 2005.

Despite these efforts, five new very active vessels entered the sector between 2000 and 2006. Marginal permits that qualified for an LLP based on landings in only 1 of the 4 qualifying years were placed on new full-time vessels, including the newly built, highly efficient Bering Leader. But while capacity has increased, the Pacific cod stock and allowable catch levels have decreased.

Nor has the buyback program been particularly effective. The \$35 million that Congress authorized bought only three vessels, including two that began fishing post moratorium and one latent permit. We understand, moreover, that one of these entities is now seeking to use its buyback funds to reenter the fishery with a new vessel.

Now essentially the same private entity that administered this ineffective buyback is proposing legislation for its own private cooperative. FCA has four main concerns with this legislative proposal. While safety is an important consideration, it should not be used to justify a fundamentally flawed cooperative proposal that is contrary to legal standards and express council and congressional goals for this fishery.

Madam Chair, the Coast Guard noted the allocation issues and our concerns are as follows.

First, as a matter of policy, North Pacific Council and not Congress should be authorizing the formation of cooperatives and allocating this fishery to individual participants.

Second, the proposed cooperative uses landings over only the 2003 to 2005 period to allocate the fishery, even though it used a 5-year period to administer the buyback. As we have shown, other Council and Congressional rationalization plans in the North Pacific, including that for Pacific cod, used far more comprehensive qualification periods. The allocation time period was truncated specifically to secure the participation in the co-op of recent aggressive sector entrants. However, this has come at the expense of FCA and historic participants whose allocations would be reduced as a result.

Such a reallocation is not consistent with the Magnuson-Stevens Act, particularly as reauthorized. The MSA requires consideration of recent and historic participation in any such allocation.

The legislative proposal is also flatly consistent with the moratorium's purpose to protect those who made long-term investments. Were Congress to act on this legislative proposal, it would knowingly reward speculative entry into a fishery that both the Council and Congress have tried to limit.

Finally, the legislative proposal only partially and perhaps temporarily rationalizes this fishery. It does not create a durable allocation. Instead, it merely authorizes the formation of a cooperative. If this agreement among the participants in this historically fractious sector dissolved, the fishery would revert to a status quo race for fish, and Congress' action would be for naught.

Accordingly, if there is to be legislation, which FCA does not support, Congress should implement a system, such as an ITQ or the rockfish pilot program that fully allocates the fishery. Further, it should use allocation criteria that are consistent with the MSA precedent in the North Pacific and a desire not to reward specula-

tive entry. A qualification period using 1995 to 2005 would be more equitable and legally consistent.

Finally, FCA would like to briefly address the vessel replacement issue. It was on Easter morning that FCA's non-AFA catcher/processor, the Alaska Ranger, was tragically lost with five crew. As explained in greater detail in our written testimony, legal and regulatory barriers of the sort being addressed on the AFA sector's behalf in the House Coast Guard bill prevent the replacement of this and many other vessels. If Congress does not comprehensively address these barriers for all catcher/processor vessels, vessels will continue to age and become increasingly less reliable. The likelihood of future similar tragedies will increase.

We would be glad to work with the subcommittee on comprehensive vessel replacement reform.

Thank you.

[The prepared statement of Mr. Frulla follows:]

PREPARED STATEMENT OF DAVID E. FRULLA, PARTNER, KELLEY DRYE & WARREN, LLP, ON BEHALF OF THE FISHING COMPANY OF ALASKA

My name is David E. Frulla. I am a Partner in Kelley Drye & Warren, LLP, in Washington, D.C. Since 2006, we have served as counsel to The Fishing Company of Alaska, Inc. ("FCA") with respect to certain matters pending before the U.S. Department of Commerce, the North Pacific Fishery Management Council, and the Congress. I would like to thank Chairwoman Cantwell on behalf of FCA for extending this opportunity to provide testimony on rationalization in the North Pacific freezer longline fishery for Pacific cod. FCA was a pioneer in developing the Pacific cod freezer longline fishery in the 1980s. This testimony will touch first upon concerns that FCA has with the private cooperative proposal put forth by some members of the Freezer Longline Conservation Cooperative ("FLCC"). Next, I will set forth in general terms an alternative that better fits the legal requirements under the Magnuson-Stevens Fishery Conservation and Management Act ("MSA") and is consistent with recent rationalization programs authorized by Congress and the North Pacific Fishery Management Council. Finally, this testimony will touch on issues related to vessel replacement and vessel safety.

#### **I. FCA's Position on the Legislative Proposal for a Pacific Cod Freezer Longline Cooperative**

Some FLCC members are seeking Congressional authorization for the formation of a freezer longline cooperative to harvest Bering Sea/Aleutian Island ("BSAI") Pacific cod. The proposal would allow for formation of this cooperative upon agreement by eighty percent of the sector participants. Any vessels not choosing to participate in the cooperative would be allocated the percentage of the total cod quota landed by those vessels, on average, for the years 2003 to 2005. However, such allocation is not exclusive to the non-participating vessels, but would be placed in a common pool subject to a "race-for-fish." The FLCC proposal does not purport to allocate Pacific cod beyond this split between the cooperative and "open access" components of the sector, such as on an individual vessel basis, and does not allow for the formation of other cooperatives. Accordingly, it is an incomplete solution to the safety issues about which this hearing is concerned.

The terms of the legislative proposal (as we understand it) are, of course, a bit of a formality as more than eighty percent of the sector participants have negotiated an agreement that could be implemented upon passage. FCA has participated in these discussions, but has objected to the terms offered, particularly the awarding of significant amounts of the cooperative share to new and recent entrants. FCA also objects to the proposal's use of 2003 to 2005 as the baseline for determining the split between the cooperative and "open access" components of the sector. In sum, while rationalization of a sector may have a salutary impact on vessel safety, the imperative to increase safety should not be used as an excuse to drive an unfair allocation.



*A. The Truncated Allocation Period is Inconsistent with Law and Recent Allocation Programs*

First, the legislative proposal's use of such a brief and recent qualification period, 2003–05, is inconsistent with allocative decisions by both Congress and the North Pacific Fishery Management Council. For instance, when allocating cod among sectors in Amendment 85 to the BSAI groundfish plan, that Council considered a range of years from 1995 to 2003, ultimately choosing allocations falling within this range. Currently, the Council is considering 1995 to 2005 (best 5 or 7 years) as the basis for allocating Gulf of Alaska cod. Likewise, when Congress established the Rockfish Pilot Program in 2004, it chose 1996 to 2002, best 5 years, as the qualifying period. Similar ranges were utilized in Amendment 80 to the BSAI groundfish plan and the Bering Sea crab rationalization plan. In fact, FLCC itself used a 5-year period to justify the amount of capacity purchased for the \$35 million freezer-longline Capacity Reduction Program authorized by Congress in section 219 of the Consolidated Appropriations Act of 2005.

More inclusive timeframes are consistent with the MSA, which requires a council to take into consideration “historical fishing practices in, and dependence on, the fishery” when developing a limited access system. 16 U.S.C. § 1853(b)(6)(B). Likewise, the new standards contained in the MSA Reauthorization Act governing limited access privilege programs require consideration of *both* “current and historic harvests.” *Id.* § 1853a(c)(5). By comparison, the qualifying period recommended by FLCC is not only an outlier with respect to other Council plans and recent statutory allocations, it entirely omits consideration of historical participation.

Congress correctly instituted a policy of honoring historical catches to avoid rewarding speculative entry into fully utilized fisheries, like that for Pacific cod. Indeed, there have been five new entrants into this sector this decade (although two of these new vessels were just bought out in the buyback program), even as cod TACs have been steady or declining relative to 1990 levels. This recent capitalization, which FCA understands is continuing, runs counter to efforts by the Council and Congress to reduce capacity in this sector and others in the North Pacific.

*B. The FLCC Proposal Undermines Capacity Reduction Efforts*

The pre-existing Pacific cod freezer longliner capacity control policy is reflected in the North Pacific Council's 1995 vessel moratorium, and its institution of the license limitation program (“LLP”), which became effective in 2000. Further, in 2002, Amendment 67 to the BSAI groundfish plan was adopted to stabilize the Pacific cod fisheries by creating gear endorsements designed to define the universe of eligible vessels. 67 Fed. Reg. 18129 (Apr. 15, 2002). To qualify for the freezer longline sector, a vessel must have had a catcher-processor endorsed LLP groundfish license and harvested at least 270 tons of Pacific cod in at least 1 year between 1996–1999, inclusive, on the vessel that gave rise to the LLP.

Yet, as explained above, despite the moratorium and LLP program, a total of 5 new vessels entered the fleet as full-time participants between 2000 and 2006, including the new-built *Bering Leader*. Although it is not clear how these vessels became qualified, it is likely that they are using LLPs that arose from one of the ten vessels that fished only one year during the qualification period (five of which only fished in 1996).

During this post-LLP timeframe, Congress also became concerned with the amount of capacity in this (and other) BSAI groundfish sectors, and so authorized a publicly subsidized buyback program in 2005 (Section 219 of the Consolidated Appropriations Act of 2005). To date, the freezer longline sector is the only sector to have proposed and consummated a buyback under the capacity reduction program.

This history is relevant to FCA's main concerns with the FLCC proposal. For one, all problems relating to excess capacity in this sector, which cooperative legislation is supposed to address, are entirely of the sector's own making. Although the Council at least attempted a good first few steps in moderating capacity, what happened in fact was that part-time and sporadically used LLPs (which only had to land 270 metric tons in 1 year for a cod endorsement) were placed on new, full-time vessels, most now catching between 2,000 and 3,000 metric tons per year. Nor has the buyback been particularly effective in reducing capacity. The buyback, as privately administered by the proponents of this legislative cooperative, only purchased three vessels and an unaffiliated permit for \$35 million; however, two of the vessels purchased were new vessels that began fishing in 2000 and 2001. All this new capitalization has had the effect of eroding FCA's recent overall share of the Pacific cod catch.

The result has been far from the salutary effect Congress and the Council sought through the license limitation program and the vessel buyback. Indeed, the desire to add capacity to the freezer longline sector continues. In fact, we understand that

one of the participants in the buyback has attempted to use buyback funds to purchase an otherwise non-qualified vessel and a currently unused freezer longline-endorsed LLP to put new capacity back into the fishery. If this attempt were successful, then this buyback will have repeated the failures of the original New England groundfish buyback program, which the Government Accountability Office found has led to an increase in capacity, rather than the intended decrease.

This history is relevant to the qualification period being advocated by FLCC because it underscores that the proposed legislation is more designed to garner new entrants' support and solidify existing, private arrangements among the members of FLCC, than it is to ensure equitable treatment of historical participants like FCA. Basing allocations on fishing patterns in 2003–2005 locks in the aberrations that arose from the well-intentioned, but flawed LLP qualification program and rewards those who added capacity at a time when the Council and Congress were trying to stabilize this fishery by protecting "long-time participants." 67 Fed. Reg. at 18129.

FLCC's proposal is thus not only ill-advised as a matter of policy, but it is legally doubtful as well. It in no way comports with existing law, which is geared toward both protecting historical participants and discouraging speculative entrants in fully-utilized fisheries.

### *C. The Proposal Fails to Fully Allocate the Pacific Cod Fishery*

Aside from the skewed allocation proposal, the FLCC legislative proposal is flawed in that it does not fully allocate Pacific cod among all sector participants, as do all recent rationalization programs. Rather, the proposed legislation merely seeks to establish an allocation as between the cooperative that it authorizes and those vessels which do not choose to join the cooperative. This means that if the parties in this typically fractious sector were to dissolve the cooperative, the sector would revert to the status quo and the legislation would have accomplished nothing.

Under a typical rationalization program involving cooperatives, such as Amendment 80 to the BSAI groundfish plan, allocations are made to individual vessels, which can then either bring their allocation into a cooperative or into an open access pool. As the FLCC proposal does not purport to allocate fishing privileges on an individual basis, if the cooperative were to fail, the sector would revert to a race-for-fish. The former, more common, approach of fully allocating a fishery and allowing formation of cooperatives is a more rational and durable approach.

## **II. FCA's Recommended Alternative**

Since this issue was initially raised before Congress, FCA has consistently maintained that the Council is the appropriate body to develop fishery management measures such as the one FLCC proposes. It has become apparent, however, that given FLCC's persistence and the Council's increasingly heavy workload, it would be constructive to offer an alternative that would meet the desire of the proponents of rationalization for cooperative-style management, while respecting established legal standards for such a limited access privilege program.

Therefore, FCA could agree to program structured either as an individual fishery quota ("IFQ"), with authorization to form a cooperative, or a program structured along the lines of the Rockfish Pilot Program. Each program would allocate the sector's Pacific cod quota to individual vessels based on their historical catch. The latter differs from an IFQ only in that it allows any two or more vessels to form a cooperative or to join their allocation with others in a common pool where a vessel is not guaranteed its individual allocation of fish.

In order to be consistent with other programs, however, the qualification years should range from 1995 to 2005. This would both respect historical participation, as well as respect the Council's and Congress's intent in limiting access and instituting the vessel buyback program. To use just recent history, as FLCC proposes, sends a counter-productive message that building up capacity in a speculative manner can be rewarded. FCA would be pleased to work with staff to develop the details of such a program.

## **III. FCA's Perspective On the Need for Vessel Replacement**

Finally, given the focus of this hearing on safety and, in particular, the details of the American Fisheries Act ("AFA") sector's vessel rebuild language adopted by the House in the Coast Guard Reauthorization Act, FCA would like to speak briefly about the need for more generalized relief. As you may be aware, its groundfish trawl catcher-processor, the *Alaska Ranger*, tragically sank in the Bering Sea on Easter morning this year. Under the regulations then governing the non-AFA trawl catcher-processor sector (also known colloquially as the "head-and-gut" fleet), no vessel not originally qualified for the sector could ever be used to harvest the head-and-gut sector's allocation of groundfish. In other words, the fleet was consigned to fish in increasingly aging and unsafe steel.

Fortunately, that element of the regulations was sensibly vacated by a Federal district court. Presumably, pending implementation of the court's order by the National Marine Fisheries Service, replacement vessels will be allowed to be used. That, however, is only a partial solution. The *Alaska Ranger* was 203 feet length overall, and many vessels in this fleet exceed 165-feet. Under current law, no new vessel over 165 feet can be given a fisheries endorsement unless:

the owner of the vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act (Public Law 105-277, div. C, title II) (16 U.S.C. 1851 note) to allow the vessel to be used in fisheries under the council's authority.

46 U.S.C. § 12113(d)(2)(B). Astonishingly, neither the National Marine Fisheries Service, the Department of Transportation, nor the U.S. Coast Guard has ever implemented a regulatory process an owner can follow in order to make such a demonstration.

In essence, it appears that in order to replace the *Alaska Ranger*, or any other vessel greater than 165-feet, an owner would have to petition a regional fishery management council for a special rulemaking to authorize the replacement. Given the councils' already stressed workload and their lack of any practical experience or guidance for undertaking such a rulemaking, this is an unreasonable proposition. Of course, this would not be an issue with AFA vessel replacement, at least as proposed in the Coast Guard bill, because that is structured as a new special exemption to the limitation on fishery endorsements under section 12113(d)(2).

Vessel replacement is not a matter confined to one sector, but is a general safety imperative. Without the ability to replace aging vessels, the likelihood of more tragedies like the *Alaska Ranger* continues to increase. Moreover, without the ability to replace vessels, it will be increasingly difficult to meet heightened safety standards, such as those called for in the House version of the Coast Guard bill. Finally, modernization and the ability to upgrade are important to helping vessels become both more fuel efficient and better able to meet the increasingly stringent retention standards the Council has set for the head-and-gut sector by allowing for upgraded vessels that can create more product forms and more fully utilize their catch.

All companies in the head-and-gut sector agree on the need for vessel replacement, although there are differences of opinions on the specific details. It may not be prudent to wait for perfect unanimity, which, in any event, is unlikely to ever emerge. As a first step, it would seem only right to allow replacement up to the size of the vessel being replaced, with proper assurances that vessel being replaced cannot be used in other fisheries.

#### IV. Conclusion

FCA looks forward to continuing to work with this Subcommittee on these important issues. We would also be pleased to provide any additional information. Thank you again for this opportunity to testify on FCA's behalf.

Senator CANTWELL. Thank you very much.

Mr. Frulla, I think I am going to start with you. So the Fishing Company of Alaska supports the public policy benefits of co-ops in general?

Mr. FRULLA. The Fishing Company of Alaska would support an IFQ process that fully allocates the fishery. What is happening here is the legislative proposal would——

Senator CANTWELL. We are going to get into that——

Mr. FRULLA. OK.

Senator CANTWELL.—unless we get called to a vote.

Mr. FRULLA. In short, an IFQ that fully allocates the fishery FCA would support.

Senator CANTWELL. And then as it relates to Magnuson-Stevens, the formation of co-ops you think are consistent with Magnuson-Stevens.

Mr. FRULLA. In general, yes, assuming the allocations are fair, and there is a whole set of new criteria for allocation that were updated in the reauthorization act.

Senator CANTWELL. Mr. Bundy, can the North Pacific Fishery Management Council deal with this issue?

Mr. BUNDY. Senator, I have spent too much time in the engine room and my hearing is not 100 percent.

Senator CANTWELL. I am sorry. Could the North Pacific Fishery Management Council deal with this issue?

Mr. BUNDY. Oh, could they?

Senator CANTWELL. Yes, could they.

Mr. BUNDY. Yes. They could if the Council put it on their agenda. And that is a big "if," by the way, because there is a lot of competition to get on that agenda, and more proposals do not make it than do make it. And if it got on the agenda, then it would be some years in the future that it would get resolved.

In the meantime, the work of 95 percent of the fleet that has put together a voluntary co-op that they would like to implement would fall apart because time would go by, and so we would be back to ground zero.

Senator CANTWELL. Well, why should Congress deal with this if this is something the Fishery Management Council can deal with?

Mr. BUNDY. Madam Chair, I guess we point primarily to the AFA model. Here we have a fishery that is fully subscribed. All of the participants in that fishery have basically been here since the year 2000. They have been competing all under the same rule. We have approximately 95 percent of the catch that wants to pursue a co-op; 5 percent does not.

Now, the Council has done the important work. The Council has allocated the resource to this group of fishermen, and the Council has just recently addressed all the issues that would be addressed all over again if we went back to the Council, including communities because the communities out of the allocation of cod got 10.7 percent off the top.

We are asking not that Congress allocate the resource to individual companies. We are only asking Congress to provide a very simple pool by taking the existing allocation, dividing it up into two pools that reflect current harvest: one pool for those who want to join a co-op; one pool for those who do not. But it would reflect current harvest practices.

Now, if Mr. Frulla wanted to pursue an IFQ program, I encourage him to do that, and he might even get a lot of support. He can ask Congress for that or the Council for that.

But in the meantime, we need, for all the reasons that previous panel members testified to, to try to stop this race for fish. We are not taking any powers away from the Council. We are not prejudging anything. If he wants to pursue or the Fishing Company of Alaska wants to pursue what he calls a fully allocated, that is fine.

Senator CANTWELL. Mr. Frulla, what about this issue of 95 percent of the Freezer Longline Coalition working together? Have you been part of that discussion?

Mr. FRULLA. The Fishing Company of Alaska has been part of that discussion when it has been permitted to be part of that discussion.

The issue has come down to two, one a fundamental issue with Congress legislating fisheries. The second is this allocation issue. This issue of this common pool versus the co-op, as it is at this point, is basically the 95 percent versus FCA's vessels and the allocation. And what the common pool would be getting is an allocation based on—and that is just the FCA vessels—the 1993 to 1995 catch levels. That is the time when everybody was piling into that fishery that really should not have been piling into that fishery if the Council and Congress's goals had been met.

And so what the FCA is saying is no matter what you do, if you are going to do something, pull back and look at a more fair allocation period that is consistent with how the North Pacific Council has done it in other fisheries, including cod fisheries, and how Congress has done it when it has gotten involved.

Senator CANTWELL. Was there a discussion about additional fish to meet some of the issues that the Fishing Company of Alaska is bringing up?

Mr. BUNDY. Madam Chair, I will just be very brief and try to be directly responsive to Mr. Frulla's comment. In the negotiations for the co-op, everybody was included and participated.

The outcome of the negotiation, partly because of Mr. Frulla's client's recalcitrance, they got extra fish. They would get the number 2 and number 4 highest allocations of all the 36 vessels. They would get 7.1 percent under the co-op. They are currently fishing at about 5 percent or less. Even under the years 2003–2005, they would get 6.6 percent of the fishery, which is more than they have been catching the last 2 years.

It is just really difficult to swallow the allegation that somehow they have been treated unfairly, and we all did consider all those years back to 1995. It is always the same thing when we approach these types of issues. You have the "pioneers lament" about how they established the fishery and so forth. And by the way, there were companies there before theirs. And then you have the "new-comers lament." And so you have to balance those things, and that is what the negotiations did. It took all that into account and gave them some extra fish partly because of a sunk vessel that they had, partly because they just held out and are still holding out.

Senator CANTWELL. Well, I never thought I would long to have more discussions about vessel replacement, but this debate back and forth is challenging as well and makes one want to figure out how to get to the bottom line here.

So are you saying that there is a fair percentage, or are we saying that a time-frame is a more accurate assessment of what the measurement should be? Mr. Bundy or Mr. Frulla, whoever wants to go first.

Mr. FRULLA. Thank you, Madam Chair. First, in response to Mr. Bundy, the legislative proposal is not 7 percent.

Second of all, what the FCA looks to is a longer period to assess the allocation so that you take a broader range of history in determining percentages of the fishery back before all this effort came piling in.

Respectfully, of course, FCA's share declined. There are more vessels out there racing for fish in these recent years.

Senator CANTWELL. So you are saying that a longer time period is just a more historical number. And so is there a fair allocation that you think that represents?

Mr. FRULLA. We have been looking at a time period that is between 1995 and 2005 that takes a best number of years, which is how other fisheries have been allocated.

Senator CANTWELL. You are saying other fisheries took a 10-year time period.

Mr. FRULLA. I am sorry. I did not understand your question.

Senator CANTWELL. You are saying other fisheries looked at a 10-year time period for historical data?

Mr. FRULLA. Up to about a 10-year time period. That is all set forth in the written testimony in terms of the periods. Some of the fisheries that have been allocated in the North Pacific that everybody has been talking about have looked at qualification periods that go back to 1995. Again, we have that laid out in our written testimony.

Senator CANTWELL. But that is what I am trying to get out, is the measurement stick. And so are you saying 10 years, or you are saying—

Mr. FRULLA. We are saying 10 years is a lot fairer than 3. We are saying something in between could be possible too.

Senator CANTWELL. And you think other fisheries management did 10-year—

Mr. FRULLA. I know it did. It is in the record for these other fisheries.

Senator CANTWELL. Mr. Bundy?

Mr. BUNDY. Senator, again, we are following the AFA precedent which was 3 years. I mean, it is true that these programs have all kinds of sets of years, the shortest 2 and the longest 7, although I am not aware of any with 10. Under Mr. Frulla's proposal, you would have to go from 1995 to 2007 because the law requires us to consider recent participation. So that is 13 years. That is way, way off anything that I am aware of.

We did consider the early years as a group, and when you consider all this, it ultimately does come down to a percentage.

With regard to piling on and speculators that they are complaining about, again, in the year 2000, the Council established the rules for who was in and who was out. The speculation argument was relevant then in 2000, not now. We have all been in since 2000. We have all had the same number of licenses that people have dealt with. The Fishing Company of Alaska has competed in a way so that they have continued to catch less fish vis-à-vis the rest of the fleet. Some have done better; some have done worse. The negotiation balanced all that out.

Senator CANTWELL. Could the two of you comment on the House language on vessel replacement and your thoughts?

Ms. PARKER. Madam Chair, there are three components here. Any replaced vessel is prohibited from participating in any fishery outside the North Pacific and the West Coast hake fishery. Any rebuilt or replaced vessel that increases its length would be prohibited from fishing in the Gulf of Alaska. And any retired AFA vessel

must surrender its fishery endorsement and so cannot participate in other U.S. fisheries.

Senator CANTWELL. Mr. Hyde?

Mr. HYDE. American Seafoods supports all of the proposals to allow vessels to be replaced. I think that as long as you have a race for fish, there is a real issue of what that does when you allow new vessels to continue entering a fishery, but once you have rationalized fisheries, then I think it is time to remove all of those restrictions.

As I commented in my testimony, though, with respect to the catcher/processor sector of the AFA fleet, it is not a safety issue. Nearly all of the vessels are classed and all the vessels are load-lined. It is purely an efficiency measure with respect to that sector.

The other problem is that that Coast Guard language really does not affect any of the vessels that seem to be the focus of a lot of the discussion today, the H&G trawl fleet and the H&G longline fleet. If this legislation is going to do what it really probably ought to do, it needs to be much broader than it is right now.

The last issue is that that language, while it focuses on vessel replacement, it actually has another very important component which is what we call an inshore permit stacking or quota stacking proposal. Again, this proposal makes a lot of sense. You have more catcher vessels inshore than you need. This would allow vessel owners to take their quota off one vessel and put it on another vessel, giving you the opportunity to make sure you have the most efficient vessels on the ground. It all makes great sense and we ought to do it, but we ought to do it as a package.

Senator CANTWELL. Mr. Bundy or Mr. Frulla, do you have any comments about the House language in the Coast Guard bill?

Mr. FRULLA. If I may, Madam Chair, the Fishing Company of Alaska strongly supports what Mr. Hyde is saying, extension of the vessel replacement language to Amendment 80, head and gut groundfish trawl fleet, as well as the freezer longliner fleet. It strongly supports that.

Senator CANTWELL. Mr. Bundy?

Mr. BUNDY. Senator, we are supportive of that. I am going to point out that we do not have any specifics from that fleet. It has been 2 years, I think, since we asked that fleet if they wanted to be included, please provide some language, and we have just never seen it. And so I hesitate to just say I support whatever they want, but conceptually we support them.

Senator CANTWELL. Well, thank you.

We have a vote in progress, well under progress now. So I am going to submit some additional questions to several of the panelists here, and if you could get us a timely response in that.

Again, I appreciate everyone's attention to today's hearing. These are important economic and safety issues for the Northwest, for Alaska, for Washington, and for Oregon. So we appreciate the fact that people have traveled and followed these safety and fishing issues so closely.

So we appreciate you getting back to us and the rest of the information that we are requesting.

So this hearing is adjourned.

[Whereupon, at 4:17 p.m., the hearing was adjourned.]





## A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
JAMES SANCHIRICO

*Question 1.* A 2005 United Nations Food and Agriculture Organization report estimates that the market value of the world's fisheries in 1990 was \$70 billion, but that the operating cost of those fisheries was \$92 billion. An unprofitable fishing industry does not create an environment where safety or sustainability of the resource is a top priority. How does the choice of one fishery management regime over another contribute to this problem?

Answer. The institutional framework within which fishermen operate can and has generated perverse incentives and perverse outcomes that are attributable to institutions rather than inherent human character. That is, fisheries are overexploited not because of greed or corruption or other character flaws of users and regulators but rather because of management regimes that have failed to address insecure access rights.

A back of the envelope calculation to emphasize the potential economic gains that are currently being "left in the water" by not addressing the rule of capture incentives is as follows:

1. Start by taking the 1990 estimate of world revenues of \$70 billion per year
2. Take the data from individual fishing quota fisheries from around the world with profit rates ranging from 20 percent to 60 percent
3. Multiplying \$70 billion by this range of profit rates yields sustainable profits ranging from \$14 billion to \$42 billion per year.

Therefore, by not rationalizing our fisheries, we are squandering the original loss of \$22 billion plus the potential profits ranging from \$14 to \$42 billion. In other words, we potentially could turn the \$92 billion spent on operating costs into \$94 billion in profit via rationalization.

*Question 1a.* Is there an alternate fishery management plan that would make fishing more profitable?

Answer. Any management institution that treats the fundamental cause of economically and ecologically depressed fisheries—the insecure rights to the resource (or "rule of capture" incentives)—will create the necessary conditions for the fishery to become profitable.

*Question 1b.* What fisheries that have implemented rights-based fishing are success stories?

Answer. While I do not have the exact number of fisheries, I would argue that all of the major commercial fisheries throughout the world that have implemented rights-based fishing systems can be considered successes in terms of improving economic efficiency. With regard to ecological criteria, there are two potential measures of success. Rights-based fisheries have for the most part been designed under the auspices of single-species management. In that regard, the fisheries in which the total allowable catches have been set using the best available natural and social science are a success in that their stocks are stable with respect to fishing mortality factors. Another potential metric is the ever-elusive health of the marine ecosystem in which rights-based fishery management systems are just one of the factors contributing to the health of the system. In this case, it is difficult to discern cause and effect in such complex coupled natural-human systems. We can say, however, that rights-based systems are consistent with lower ecological impacts, more so than are race to fish conditions. For example, slowing the pace of fishing and focusing on maximizing the quality of the yield will result in improvements in targeting capabilities that will translate into habitat damage and lower bycatch and discard rates.

Finally, rights-based systems foster a stewardship ethic that manifests itself into a long-term view of the resource productivity. Expectations of future conservation-minded management are capitalized immediately in the individual fishing quota

prices, and it then becomes in the interests of rights holders to preserve those capitalized values by promoting actions that ensure future biological and economic sustainability. In the same manner that shareholders have an interest in ensuring that managers maintain the asset value of firms, so do shareholders of rights-based fisheries have an interest in ensuring that their quota values are protected by wise and forward-looking policies.

*Question 2.* Do “race for fish” management regimes promote economic stability within the fishing industry? What impact does such a regime have on employment within the fishing industry? How does the economic situation change when rights-based fishing systems, such as individual fishing quotas, individual transferable quotas, cooperatively managed fisheries, and community development quotas, are implemented?

Answer. Of course, defining economic stability for an industry that is heavily regulated can be tricky. That said, I would argue that economic stability characterized by little or no economic return is not a desirable ends. Yes, the transition to a rights-based system can introduce short-term changes to an industry that according to some might be destabilizing, but these changes promote the type of economic stability for harvesters, processors, and fishing-dependent communities that is desirable from society’s point of view.

To reiterate what I said in my testimony, the creation of wealth from addressing insecure access rights will lead to improved stewardship, sustainability, and further innovation to increase value.

*Question 3.* What are the environmental impacts of fishery cooperative formation?

Answer. Cooperatives and individual fishing quota systems will slow down the pace of fishing. We have observed, for example, the season length went from 75 days to 149 days after the creation of the cooperatives in the North Pacific Pollock fishery, and a similar result occurred in the Pacific Whiting Cooperative. As I mentioned above, slowing the pace of fishing and focusing on maximizing the quality of the yield will result in improvements in targeting capabilities that will translate into habitat damage and lower bycatch and discard rates.

*Question 4.* Many fish species are subject to natural booms and busts in stock size as ocean conditions vary from year to year. How does this variation in stock size and, therefore, total harvest impact the profitability of a given fishing sector? Would the implementation of a rights-based fishing system mitigate the economic impacts?

Answer. Regardless of the management structure in place, the economic returns from fishing are a function of both economic and ecological characteristics, including prices, labor costs, fuel costs, growth rates of species, trophic interactions, habitat conditions, and so on. The greater the variability in these factors from year to year, the greater the fluctuations in the economic returns.

Yes, a fishing industry operating under management systems that result in little or no economic return on average, such as “race for fish” systems, are more economically vulnerable to short-term fluctuations than one operating under a rights-based system. Reasons for the additional vulnerability include: (1) investments solely focused on improving catching efficiency as a means to better compete for a limited catch; and (2) with little or no economic return in “race to fish” fisheries, the ability of the harvesters to handle unexpected variations in fishing costs or stock size, for example, is diminished (for example., there may be a lack of capital to use as collateral to offset downturns).

See also my written testimony and the citations therein for a discussion of the changes under rights-based management systems that have been observed throughout the world.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
LESLIE HUGHES

*Question 1.* Does a race for fish pose a significant safety risk?

Answer. Yes. Open access fisheries inadvertently promote more risk taking, in the form of greater crew fatigue from working longer hours, fishing in hazardous weather in order to maximize catch and economic gain, and vessel overloading.

*Question 2.* Does current law, such as the Commercial Fishing Industry Vessel Safety Act of 1988, address any of the safety concerns posed by a race for fish?

Answer. Only in that crews are better prepared and equipped to respond to an emergency situation which is more likely to occur in an open access fishery.

*Question 2a.* How would fishery management practices have to change in order to improve fishing safety?

Answer. National Standard 10 of the Magnuson Fisheries Conservation and Management Act of 1976 was amended by the Sustainable Fisheries Act of 1996 and recommended that NMFS “implement management measures that reduce the race for fish and the resulting incentives for fishermen to take additional risks with respect to vessel safety.” To improve fishing safety, more fisheries should adopt “rationalized” management plans.

The fishery management plans in effect in the North Pacific that are “rationalized” are safer. Rationalized fishery management programs off Alaska now exist for halibut, sablefish, Bering Sea/Aleutian Pollock, Bering Sea/Aleutian king, Tanner and snow crab and for the Amendment 80 ground fish trawl fleet. These fisheries are managed by either cooperatives or by individual fishing quotas (IFQs). These management programs are similar in many ways and they share common advantages to vessel operations and fishing vessel safety. Harvest quotas are allocated to cooperative members or to individual vessel owners for their exclusive usage during an extended season, which results in the following benefits: In practice, this means that vessels can plan for their season, and they can conduct their fishing, of their quota, during reasonable weather at a reasonable pace to be safe and maximize economic returns.

*Question 2b.* Is there evidence from other fisheries to support this?

Answer. Yes. One example is the notoriously dangerous Bering Sea/Aleutian king, Tanner and snow crab fisheries. In the decade of the 1990s, prior to rationalization, these crab fisheries sustained an average of eight fatalities per year. In the past 3 years under new Individualized Fishing Quotas fisheries management, there have been zero fatalities and no Coast Guard Search and Rescue missions on vessels participating in rationalized crab fisheries.

*Question 2c.* Do the fishermen in these fisheries feel that safety has been improved?

Answer. Absolutely.

*Question 3.* What grade would you give to the overall state of commercial fishing safety in the United States?

Answer. I do not believe it is possible to generalize a “grade” for the entire country. Fishing vessel safety is best considered by gear types, regional areas of operation, seasons, crew training and vessel condition.

*Question 4.* During the hearing, you testified that more preventative safety measures are needed in order to improve fishing safety. In your opinion, why have we failed to implement more stringent laws and regulations?

Answer. The Fishing Vessel Safety Act of 1988 that resulted in 46 CFR Part 28 regulations for the commercial fishing industry applied generally to a very diverse fleet nationally. The Coast Guard’s enforcement of full compliance with those regulations since they were published in 1991 has ranged from being very successful (Districts 13 and 17) to inconsistent from region to region, and, consequently, it has been difficult to determine just how effective they have been at improving fishing vessel safety. More stringent laws and regulations, in my opinion, need to be based on actual, identified risks through casualty data. It is extremely difficult to track casualty rates over time and measure success without reliable and complete casualty information, which is critical for determining where additional enforcement action is needed.

*Question 4a.* In your experience with the fishing community, do you believe that the fishing community would support more stringent safety regulations?

Answer. Yes, as long as they addressed an identified risk and were perceived to improve safety. The Seattle-based fishing community, which accounts for 85 percent of the catch in Alaska, is very proactive about safety, and would most likely be the region of the country that would be least resistant to additional safety regulations. Our North Pacific region also has strong Coast Guard oversight from the two Districts (13 and 17) that our vessels home port and fish in. Coast Guard personnel in those Districts have implemented several initiatives that addressed identified high-risk fisheries and directly resulted in improving the safety record of those fleets. Specifically, to reconcile regulatory definitions and material requirements for a group of processing vessels in the H&G fleet, an Alternate Compliance Safety Agreement was developed. This program has resulted in substantial vessel improvements and increased training for the crews. In spite of significant monetary impacts, the program received strong industry support and active participation with the affected segments of the industry.

There will always be segments of the fishing industry that would find additional regulations an undue economic hardship that could threaten their livelihood.

*Question 4b.* In what areas do you believe regulation is most needed?

Answer. The existing regulations focus on requirements for carriage of survival equipment designed to improve survival rates in the event of an incident, along with some minimal training requirements. This was an extremely important first step, but has not generated a program of accident prevention. Prevention is the area where future regulations need to concentrate, particularly vessel losses.

Some other areas where preventative measures should focus would include safety training and certification based on safety training. NPFVOA also supports making Voluntary Dockside Exams mandatory for all fishing vessels. Our organization fully supports improving the Coast Guard's enforcement of existing regulations. Stability standards for vessels less than 79 feet have not been published by the Coast Guard and are long overdue. The Coast Guard has published an Advanced Notice of Proposed Rulemaking (Docket No. USCG-2003-16158) that, if adopted, would improve stability standards. It is presently in a comment period that was recently extended until December 15, 2008.

*Question 5.* From your interactions with the fishing community, what is the fishing industry's position on the proposed fishing vessel safety language in the House Coast Guard bill that would require safety inspections twice every 5 years, require safety training, and implement vessel construction standards?

Answer. Although I cannot speak for the entire fishing community, I believe that a large segment would support vessel safety examinations and additional safety training. Requiring all new fishing vessels to be classed or inspected by the Coast Guard would improve safety overall, but requiring a load line for new construction or a similar review would provide nearly the same level of safety at a significantly lower cost.

Entering an existing vessel into ABS or similar class would be difficult or impossible for much of the fleet, because the classification societies have restrictions on the types and ages of vessels they will accept into class. If the Alternate Compliance Safety Agreement (ACSA) program were expanded to cover more vessels nationally, the U.S. Coast Guard would need a substantial number of additional billets to be fully funded for the significant additional work that would be added to the local inspection offices.

*Question 5a.* Do you believe that the measures included in the House Coast Guard bill will improve fishing vessel safety?

Answer. I believe most of the recommendations in H.R. 2830 would improve safety, particularly the additional safety training and vessel safety examinations. The proposed language for some of the new construction requirements is very complicated and may have unintended impacts if passed without a thorough regional analysis.

*Question 6.* Attendance in the North Pacific Fishing Vessel Owners' Association (NPFVOA) Vessel Safety Program's safety courses has exceeded 34,000 from fishing industry as well as mariners from other industries. Why do you think your program has been so successful in engaging the North Pacific fishing community?

Answer. The fact that the NPFVOA Vessel Safety Program was developed in cooperation with the U.S. Coast Guard is a key reason, but equally as important is the fact that recognized fishing industry leaders supported development of the program specifically based on identified regional needs. The program focus has always been directed specifically at safety problems and risks that these fishermen face in the North Pacific. The program has continued to be highly valued as a safety program "by fishermen, for fishermen". The safety courses offered by NPFVOA exceed those required by the U.S. Coast Guard and, because they address the safety concerns faced by fishermen, 70 percent of attendance in our courses has been voluntary. Over the past 23 years since the program was implemented in 1985, NPFVOA's membership has grown to more than 200 vessels, representing a broad range of gear types, and approximately 150 support businesses and individuals. Having a vessel membership is extremely important because it further builds community involvement and helps to create a "safety culture".

*Question 6a.* What has been the largest challenge to implementing your program's goals?

Answer. NPFVOA's biggest challenges have been how to best address a multitude of safety issues for such a diverse and dynamic fleet, and having adequate funding to accomplish all of our goals. Initially the program was funded by Saltonstall-Kennedy Funds, but it has been private since the program was developed more than 20 years ago.

*Question 7.* Do you support allowing vessel replacement in the Pollock catcher processor fleet and the head and gut fleet?

Answer. Yes. The American Fisheries Act (AFA) has by most measures been an extremely good piece of legislation, as in part it has established a well reasoned

“rationalized fisheries management program” for our Nation’s largest fishery—Bering Sea Pollock. The shortcoming of this act is that it precludes vessel owners the ability to replace AFA qualified vessels, both Pollock catcher processors and catcher vessels, that could become worn out and increasingly unsafe over time. Under current law, to be replaced, a vessel must be a total constructive loss. This is an unreasonable predicament that badly needs to have the language amended so that vessel owners can replace aging vessels that become unsafe with new and modern vessels. Most of the Bering Sea Pollock trawlers and H&G fleet were built in the 1970s—1980s with hull life expectancy of 25–30 years. Corrective actions are now extremely timely.

*Question 8.* How urgent is the need for vessel replacement legislation for the AFA and non-AFA fleets? Is safety an immediate concern for these fleets?

Answer. The AFA and non-AFA fleets are definitely aging, with many vessels being at least 30 years old and some World War II-vintage vessels still in service. The fleets differ substantially and not all are of the same age and material condition. There is no good reason to not have the ability to replace these vessels so those that need to be replaced can be replaced in a reasonable manner. To preclude this timely replacement ability is completely counterproductive.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
COMMANDER CHRISTOPHER WOODLEY

*Question 1.* A number of reports from the Coast Guard and the National Research Council identify issues with fishing vessel integrity and human behavior as the primary causes of fishing accidents and fatalities. Do you believe that these two issues are the primary causes of fishing casualties or is the problem larger in scope? Where should we be directing our attention and efforts while trying to improve fishing safety? Who bears the primary responsibility for improving fishing safety? Is this an area where many share responsibility, but few actually take initiative? Does a race for fish pose a significant safety risk?

Answer. The National Research Council’s report *Fishing Vessel Safety—Blueprint for a National Program*, 1991, determined fishing vessel safety should be considered a “total concept.” The report delineates three major factors which influence commercial fishing safety: vessel, fishermen, and external forces (NRC 1991). The Coast Guard concurs with the report and believes these factors should be the focus of attention and efforts while trying to improve fishing safety.

*Vessel Factors*

Mandatory standards for construction, outfitting, and maintenance are necessary to reduce vessel losses. These standards must be enforced through mandatory examinations by experienced marine surveyors or Coast Guard personnel. The Coast Guard currently lacks authority to impose such standards.

*Fishermen Factors*

Professional competency (e.g., training and skills) and behavior (e.g., risk taking attitude and a sense of responsibility for safety) define fisherman factors. As required by the Commercial Fishing Industry Vessel Safety Act of 1988 (P.L. 100–424), the Coast Guard recommended establishing a commercial fishing licensing program to improve the competency of those operating vessels within the industry. Since passage of the Act, vessel safety equipment and the ability of crews to properly use that equipment has improved. The Coast Guard has no legal authority for licensing, the education, training, and competency demonstration.

A number of safety improvement alternatives could address risk tolerance within the commercial fishing industry (see Table 8–1 of the NRC report, *Safety Improvement Alternatives*). They include:

- Mandatory training and demonstration of competency in safety equipment and emergency procedures such as firefighting, man overboard recovery, and damage control.
- Training and competency demonstration in vessel operations.
- Adoption of safe operating practices, such as limiting work hours, providing mandatory rest periods, navigational watch procedures, and wearing personal flotation devices on deck.

*External Factors*

Management, economics, weather and sea conditions are external factors that affect fishing vessel safety. Management systems reduce participation and encourage the exit of older and less safe vessels from the fleet improving safety records. Under

the reauthorized Magnuson-Stevens Fisheries Management and Conservation Act, the National Marine Fisheries Service (NMFS) and the fisheries management councils are obliged to address safety under section 301 (national standard 10) and in section 303(a)(9)(C), which includes safety assessments in fishery impact statements.

#### *Future Efforts to Promote Fishing Safety*

The Coast Guard believes that the focus of future commercial fishing industry safety improvements must be focused on preventing casualties. Existing authority is focused on equipment to be used in surviving a casualty. While safety equipment carriage is part of any safety regime, ensuring vessels are suitable for the intended service and that their crews are adequately trained and experienced is of vital importance. This approach addresses both vessel integrity issues and risk management practices. All top fishing nations, except the U.S., have adopted standards to address these issues. For instance, in Canada, commercial fishing vessels must undergo mandatory examinations and operators must be licensed.

#### *Responsibility for Improving Safety*

Primary responsibility for improving safety within the commercial fishing industry rests with the industry itself including owners, operators, and vessel personnel. Unfortunately, the history of safety within the industry has shown without Federal intervention, most vessel operators do not take the initiative to improve.

The Coast Guard is a nationally and internationally recognized expert in maritime safety (standards development, enforcement, and search and rescue) and designated by the Commercial Fishing Industry Vessel Safety Act of 1988 as the national lead for fishing vessel safety. While the Coast Guard is the lead agency, many other agencies share responsibilities. Federal and state fisheries managers have a significant influence on safety but their primary responsibilities focus on sustainable resource management, distribution of natural resources, and economics of the industry. Other enforcement agencies (OSHA) and research agencies (NIOSH) also have responsibility for contributing to safety improvements.

#### *Risk associated with "Race for Fish" Fisheries*

There is general agreement that fisheries managed as open access or regulated open access, which create a "race for fish" and derby style operations, encounter more safety problems than fisheries under alternative management schemes. The limited opportunity created by such restrictions tends to tip the balance toward economic viability at the expense of safety. The "race for fish" style fisheries lead to excessive work hours, risk taking such as overloading, operating in undesirable weather conditions and other safety problems. Research has shown that there are significantly safer methods of managing fisheries than the derby style and many fisheries management councils have recognized this and taken actions to implement limited access privilege programs to reduce the race for fish. Additionally, other management practices used to ensure sustainable fisheries may also resolve safety issues (e.g., closed areas and seasons and gear restrictions).

*Question 2.* Does current law, such as the Commercial Fishing Industry Vessel Safety Act of 1988, address any of the safety concerns posed by a race for fish? How would fishery management practices have to change to improve fishing safety? Is there evidence from other fisheries to support this? Do the fishermen in these fisheries feel that safety has been improved?

Answer. No. The Commercial Fishing Industry Vessel Safety Act of 1988 addresses carriage of safety equipment but not fisheries management practices.

Recent changes to the Magnuson-Stevens Fisheries Conservation and Management Reauthorization Act require additional consideration of safety in the development of fisheries management plans. Consequently, the Coast Guard is working with National Marine Fisheries Service (NMFS) to improve how fisheries management plans address safety.

As a general rule, fisheries that have adopted effective constraints on participation and effort, such as limited access privilege programs, show safety improvements. Examples include the halibut and sablefish Individual Fishing Quota (IFQ) program, the Bering Sea pollock cooperatives, and the Alaska crab rationalization programs. Under the reauthorized Magnuson-Stevens Act, section 303A addresses such limited access privilege programs and provides requirements for implementing future programs. One of those requirements is that the limited access privilege program shall promote fishing safety. NMFS anticipates increasing the number of such programs in the next several years in virtually all the regions of the U.S. Exclusive Economic Zone.

Fishermen in the above mentioned management systems have seen an improvement in safety.

*Question 3.* Is safety a concern for the Pacific cod freezer longline fleet? What would be the safety implications of allowing the Pacific cod freezer longline fishery to form a co-op? To what extent is safety a reason for Congress to move forward with the proposed co-op legislation?

Answer. The Coast Guard has safety concerns for the Pacific Cod freezer longliner fleet for several reasons:

1. A significant number of personnel involved in vessel operations, most of whom have not had formal safety training.
2. The area of operation is harsh and remote from established rescue assets and the most productive fishing is during winter months.
3. The age of the fleet is relatively old. Older vessels are a higher risk for vessel loss and more difficult and costly to maintain.
4. Many older vessels in this fleet were “grandfathered” and not required to meet the latest standards for commercial fishing industry vessels for equipment, design, or damage stability.
5. There have been a number of significant vessel losses in this or associated fisheries where each resulted in a large number of fatalities.

The Coast Guard is not aware of any adverse safety implications resulting from formation of fishing cooperatives. In fact, fishing cooperatives can promote improvements in safety if structured in ways that encourage participants to consolidate efforts and remove less efficient and less safe vessels. In this context, section 303A of the Magnuson-Stevens Fisheries Conservation and Management Reauthorization Act includes safety as one objective of limited access privilege programs.

Safety of life should be a major consideration in developing all fisheries management plans including cooperatives.

*Question 4.* Is there an immediate need for legislation to allow vessel replacement? What is the safety record of the AFA pollock and head & gut fleets? Is safety an immediate concern for this fleet? From your professional experience, can you please share your thoughts on vessel replacement in this fleet?

Answer. The Coast Guard supports replacement vessels because higher safety standards would be required. Safety is enhanced even more with new construction rather than a major modification of an existing vessel.

#### *Safety Record of the AFA Pollock and Head and Gut Fleets*

The Bering Sea Aleutian Island (BSAI) Pollock fishery is the largest fishery by volume in the U.S. During the 1990s the fleet became more competitive and season lengths decreased creating a derby style fishery. The America Fisheries Act (AFA) changed this fishery to a quota-based system which resulted in a 45 percent decline in the number of factory trawlers and a 15 percent decline in catcher vessels in the fishery. The change from the open-access system to a quota-based system was not implemented until 1999.

The Pollock fishery had relatively low rates of fatal injuries and search and rescue cases prior to the AFA, so safety has to be measured by non-fatal injuries as well. Injury rates were evaluated by the National Institute for Occupational Safety and Health (NIOSH) based on 100 vessel-weeks in the fishery.

The Pollock factory trawlers showed a 76 percent decrease in injury rate from the four-year time period before the AFA implementation to the six-year period after implementation. The Head and Gut trawl catcher processor vessels, not managed by the quota system, had a non-fatal injury rate of 0.5 per 100 vessel-weeks for the same time periods. This was a fairly steady rate for vessels that operated similarly to the factory trawlers, before and after AFA.

Other factors could have influenced the reduction in injury rates besides the AFA and the elimination of racing to fish, including vessels dropping out of the fishery, corporate safety improvements, increased compliance with safety and equipment requirements on the vessels, and new North Pacific Fishing Vessel Owners Association (NPFVOA) safety training programs.

#### *Fleet Safety Concerns*

There is immediate safety concern for the AFA Pollock and Head and Gut Fleet for the following reasons:

1. There are a significant number of personnel that operate and work on board each of these vessels, many of whom have not had formal safety training.

2. The areas in which these vessels operate experience harsh conditions and are remote from established rescue assets.
3. The relatively old average age of the vessels poses a higher risk for vessel loss. Older vessels are more difficult and costly to maintain.
4. Older vessels, such as in this fleet, were “grandfathered” and not required to meet the latest standards for commercial fishing industry vessels for equipment, design, or damage stability.

#### *Vessel Replacement*

There are significant safety benefits from vessel replacement including higher standards for design, outfitting, construction, maintenance, watertight integrity and stability, and vessel survivability after a casualty where damage is incurred. Additionally, new vessels can be more effectively and efficiently maintained.

*Question 5.* Commercial fishing vessels are not subject to inspection and are only required to carry basic safety equipment. Do we need more stringent laws and regulations? In your opinion, why have we failed to implement more stringent regulations? In your experience with the fishing community, do you believe that the fishing community would support more stringent safety regulations? In what safety areas do you believe regulation and Congressional action is most needed?

Answer. Yes. More stringent laws and regulations are needed to improve safety within the commercial fishing industry, and the Coast Guard addressed this issue in the Advance Notice of Proposed Rulemaking, published March 31, 2008. When the rule is final, the Coast Guard will have fully implemented the safety regulations supported by the existing authority.

The progression of safety within the commercial fishing industry from voluntary standards to the existing requirements for safety equipment has convinced most within the industry that regulations are beneficial. The Commercial Fishing Industry Vessel Safety Advisory Committee, made up of fishermen and other industry stakeholders, have continually supported additional safety requirements with the caveat that economic impact must be carefully balanced with expected benefits.

Safety improvements from existing authority and educational outreach programs have resulted in a plateau in casualties over the last 7 to 8 years. The Coast Guard supports the intermediate steps to address prevention and operator competency reflected in H.R. 2830. Such measures address vessel integrity issues through additional design, construction, and maintenance combined with periodic mandatory examinations of the vessel and requirements for operator training and demonstration of competency. Such an approach is consistent with recommendations of the National Research Council in *Fishing Vessel Safety—A Blueprint for a National Program*, 1991. Additional issues of concern include drug and alcohol use within the industry and lack of appropriate standards to address fatigue caused by excessive work hours.

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#### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO JOHN BUNDY

*Question 1.* From your experience, if the freezer longline co-op proposal was submitted to the North Pacific Council, what process would it go through and how long would it take?

Answer. First, the matter would need to be put “in the pipe-line” during “staff tasking” which normally occurs at the end of each meeting. That action takes a majority vote by Council members and is not automatic because there is much competition for the Council’s attention. Second, also during staff tasking, a majority of Council members must agree to actually devote staff time to the matter and to place the issue on the agenda. Assuming those steps are taken, based on past Council actions in the context of rationalizing fisheries, the process until implementation would take years, possibly up to five or more. Attachment #1 hereto provides the timeline taken in similar past Council actions.

*Question 1a.* What are some of the major competing priorities facing the Council’s agenda?

Answer. The Council is indeed very busy and has a heavy work load at each and every meeting. Over the recently completed 5-meeting cycle, the Council failed to complete its agenda in the majority of cases. Attachment #2 hereto displays the items tentatively on the agenda for the next three meetings. Prioritizing these issues is a complicated and on-going process. Generally, I think the Council view would be that everything currently on the agenda has priority over something new. Some of the “major competing priorities” would include Bering Sea crab rationaliza-



tion program review, Bering Sea salmon bycatch in the pollock fishery, Arctic Fishery Management Plan, halibut charter (a troublesome issue that the Council has been dealing with now for approximately 14 years), annual quota-setting for 18 species categories in the Bering Sea/Aleutian Islands (BSAI) and 20 in the Gulf of Alaska, restrictions of commercial fishing due to declined Stellar Sea Lion populations, and habitat protection.

*Question 1b.* What is the Council's position on this co-op issue? Would the Council object if Congress wanted to move forward outside of the Council process?

Answer. I cannot speak for the Council or any of its individual members. However, I can say that I do not know of any opposition from any Council member to the Freezer Longline Coalition efforts. One Council member, the representative for the State of Washington, is on record stating: "The Department of Fish & Wildlife is strongly in support of cooperative fishing efforts . . . [and] supported the recent actions of the . . . Council in restructuring the . . . Cod fishery . . . and expected that the Freezer Longline sector would be able to form a voluntary cooperative as a result of the Council's action." I believe this is indicative of the attitude of most if not all Council members and I am confident the Council would not "object".

*Question 2.* If the argument for doing this through Congressional action is that Congress would act *faster* than doing it through the Council, what does that say about the Council system?

Answer. It is not my intent to be critical of the Council or to propose that the system is broken and needs to be fixed. On the contrary, in my 9 years on the Council I witnessed many important achievements, including a regulatory regime that cut bird bycatch by 69 percent, closure of 277,100 square nm to bottom trawling, and special protection for discrete areas of sponge and coral habitat and all seamounts. The Council's conservative science-based approach to quota setting came to be recognized as "the Alaska Model" and was incorporated in the latest reauthorization of the Magnuson-Stevens Act and applied to all Councils. But, the Council is also extremely busy and not able to address every legitimate issue. And it is also true that the Council and Congress often work together or in tandem particularly on rationalization issues. The American Fisheries Act, which provided the basis for rationalization of the world's largest whitefish fishery, was enacted by Congress and implemented by the Council. Both the Bering Sea crab rationalization program and Gulf rockfish pilot program were done by the Council at the direction of Congress.

*Question 2a.* As a 9-year veteran of the North Pacific Council, in your opinion, what would it take for the Council to act faster on these and other issues before us?

Answer. The Council itself is in the process of addressing this issue. Given the public process involved and the importance of the issues to the participants involved, and the requirements of the National Environmental Policy Act, I think the Council will continue at about the same pace it has. Of course, there are ways in which the Council can better discipline itself and its members to be more time efficient, but I don't see that any big time savings are possible. I do think it is up to the Council to make any changes necessary to at least stay within its agenda because members of the public often travel great distances to participate.

*Question 3.* Is safety really a concern for the Pacific cod freezer longline fleet?

Answer. Indeed, it is. There is almost universal agreement, as testified to by many of the witnesses at our hearing, that vessels engaging in a race for fish will find themselves in unsafe operating conditions inherently caused, or encouraged by, the "catching as much as you can—as fast as you can" mentality of a derby style fishery. We would like to eliminate this from our fishery entirely. In addition, a coop will provide the stability that will encourage upgrading or replacing vessels in our fleet, some of which have hulls dating from WWII. We believe that we have a safe fleet, and that we are meeting all safety requirements imposed on us, but vessels are machinery and they ultimately wear out. Safety standards evolve over time and, when a replacement occurs, a new vessel is required to meet all modern safety requirements.

*Question 3a.* To what extent is safety a reason for Congress to move forward with the proposed co-op legislation?

Answer. Based on the testimony of Leslie Hughes, Executive Director, North Pacific Vessel Owners' Association, and Commander Christopher Woodley, United States Coast Guard, safety alone is ample incentive for Congress to move forward on this issue in a timely manner.

*Question 4.* As you know, the Magnuson-Stevens Act is the gold-standard for fisheries management. If the North Pacific Fisheries Management Council were to consider the co-op proposal, one of the first questions the Council would ask is whether

a co-op is consistent with the Magnuson-Stevens Act's ten national standards. Do you believe that the formation of a co-op in this fishery is consistent with the Magnuson-Stevens Act's ten national standards for fishery management, in particular Standard 9 on bycatch and Standard 10 on safety?

Answer. For Congress to provide the tools for formation of a voluntary harvest cooperative in the freezer longline cod fishery very clearly falls within at least 8 of the 10 National Standards and is not inconsistent with any of them. To demonstrate this point, it is convenient to cite letters in the record from two independent sources: Environmental Defense Fund (EDF) and State of Washington Department of Fish and Wildlife (DFW).

No. 1: Optimum yield and prevent overfishing. "[I]ncreased product quality and supply to consumers." DFW. "[Coops] like these have succeeded in . . . ending overfishing." EDF.

No. 2: Best scientific information available. "[F]isheries with catch share systems are seven times more likely than conventional systems to be rated 'well managed' by the Marine Stewardship Council." EDF. *See, also* Testimony of Dr. James Sanchirico.

No. 4: Allocations fair and equitable; promote conservation. "The formation of coops allow\*stronger support for sustainable fishery management." DFW.

No. 5: Efficiency in using fishery resources. "When participants have a secure portion of the catch, they gain the flexibility to make business decisions that improve safety, enhance the value of their asset, and promote healthy fishing stocks." EDF.

No. 7: Minimize costs. "The [EDF] report shows that . . . catch share fisheries deployed 20 percent less gear to catch the same amount of fish." EDF.

No. 8: Fishing communities. 10.7 percent of the total Bering Sea Aleutian Island Pacific cod quota is set aside for the 65 Alaska Native CDQ coastal communities representing 25,000 residents. CDQ groups are owners in 13 of the vessels that would make up the voluntary harvest coop in the freezer longline sector.

No. 9: Minimize bycatch. "The formation of coops [will] . . . reduce impacts to the ecosystem." DFW. "The [EDF] report shows that, with catch share programs, bycatch . . . was reduced by more than 40 percent." EDF.

No. 10: Safety at sea. "The formation of coops [will] . . . improve safety at sea." DFW. "The [EDF] report also finds that safety among fishermen more than doubled." EDF. "Researchers found that quota-based and cooperative fishery management regimes [in the North Pacific] have a strong potential to improve safety over open access fisheries. . . . In the king and Tanner crab fishery . . . there have been no fatalities, no vessel losses, and no search and rescue cases conducted by the Coast Guard since implementation of the crab rationalization program. . . . Based upon [our research] formation of the Freezer Longline Cooperative could potentially lead to slower fishing and processing pace, increased fishing days, flexibility to allow operators to avoid severe weather, reduced fatigue among crew members, a more experienced professional crew, and finally reduced pressure to fish when the vessel and crew are not ready." Testimony of Commander Woodley, United States Coast Guard.

*Question 4a.* Do you believe a co-op would be inconsistent with any of those national standards?

Answer. No. See above.

*Question 4b.* Do you believe that the co-op proposal is consistent with the Magnuson-Stevens Act?

Answer. Yes. See above.

*Question 5.* The Freezer Longline Coalition has been negotiating a fishing cooperative agreement for over 2 years, and is now asking Congress for help in passing legislation on the matter. Could you please describe the process the Freezer Longline Coalition has gone through over the past 2 years, and what kind of support there is for establishing a co-op?

Answer. Negotiation Process.

The Freezer Longline Coalition members have indeed been working closely since early 2006 to form a fisheries cooperative. Earlier efforts to begin gathering data with the intent of forming a fisheries cooperative go back to early 2004. Many members have worked closely with the Council going back to pre-1995 when the Council passed the first step in moving to cooperative fisheries in the North Pacific by implementing a moratorium on new vessels entering the fishery.

Several Council actions took place during the period 1995-2008 and are detailed in our documents package, chapter fourteen. All of these steps were part of the

ground work for the formation of a voluntary cooperative. To date all of the other major fisheries controlled by the Council have formed fisheries cooperatives. Because of one company's intransigence ours remains the only major fishery still involved in the "race for fish."

After numerous meetings in which FCA participated, and days of in person negotiations in which FCA participated, and now years of follow-up, that one company remains the lone holdout. Although there are other companies in the group similarly situated in terms of fishing history and "pioneer" status, and even though FCA received the same fair and equitable treatment that every other company was afforded, FCA chooses not to participate in the voluntary harvest cooperative. Indeed, FCA has received preferential treatment because of its intransigence. Simply by signing the agreement, FCA's two vessels would have more fish than thirty of the thirty six other vessels.

At each and every turn in the negotiations FCA has thrown out more objections and taken a new stance of some aspect of our agreement. FCA's IFQ proposal, first raised at the recent hearing, is diametrically opposed to the position taken at the "stakeholders' meeting" with Congressional staff in December of 2007 where their representatives stated FCA is morally apposed to voluntary cooperatives of any kind. Kenny Down, executive director of the Freezer Longline Coalition continues to engage FCA's CEO in discussions and reports they are as far away as ever. Our group has concluded that for reasons we don't fully understand FCA cannot or will not sign our membership agreement even though it would benefit as much, and likely more, than most of the other members.

Support.

The record includes many letters of support for our position from a very broad range of interests, including the Governor of the State of Washington, the Environmental Defense Fund, numerous industry groups, financial institutions, and all six Alaska Community Development Quota (CDQ) groups. All-in-all, a total of 15 letters of support in addition to the strong support in the form of testimony at this hearing from independent witnesses Dr. James Sanchirico, Leslie Hughes, and Commander Woodley. Compare to this the dearth of support for the FCA position.

*Question 6.* What would be the implications of doing an IFQ system for the Pacific Cod freezer longline fishery as Fishing Company of Alaska suggests?

Answer. The fundamental difference between an IFQ system and a voluntary harvest coop system is that a governmental entity must create and administer the former, including initial allocations and transfers, whereas private cooperation and agreement creates and administers the latter, including initial allocations and transfers on an on-going basis. An IFQ system involves allocation to individuals by the government, whether by the Council or Congress. Thus, the aspect of a "give-away" of public resource to private parties is much stronger compared to a private, cooperative arrangement without the force of government and with the Council retaining full discretion and authority over the management regime. Since a voluntary cooperative takes care of its own allocations and transfers among members, it is substantially less expensive for the U.S. taxpayer compared to an IFQ system that needs to be administered on a vessel-by-vessel basis by a governmental agency. Because an IFQ system involves allocations on an individual basis, they tend to be very contentious and time-consuming for a Council to create and NMFS to implement. For example, the best known IFQ system in the North Pacific, halibut and sablefish, took 10 years of Council process and an additional 2+ years before it was implemented. By comparison, once the tools were in place, the catcher/processor (CP) sectors in the Pacific whiting fishery and pollock fishery formed voluntary harvest cooperatives in a matter of weeks. While our group is not opposed to the IFQ system of fisheries management, we view it as inferior to a voluntary harvest coop system. Finally, for FCA to propose it at this point appears to us as another excuse for doing nothing.

*Question 6a.* What would be some of the pros and cons of pursuing an IFQ system?

Answer. Please see above.

*Question 7.* If a co-op were formed in the Pacific cod freezer longline fishery, who do you believe would be the winners and losers?

Answer. Owners of 34 of the 36 vessels in our group agree that all would be winners even though not a single party would get his or her optimum "share" of fishing history. The reason for this attitude is that all agree the benefits of a voluntary harvest coop out-weigh this detriment. The Fishing Company of Alaska would receive a particularly generous advantage because whether it joins the coop or chooses not to, it will receive a greater share than it fishes currently or would be reasonably expected to catch in the future in an open access system. Other winners include

crew (better, safer jobs), consumers (increased recovery and quality), the environment (less bycatch, greater commitment to sustainability), and Alaska Native coastal communities (greater royalties and returns from ownership).

*Question 7a.* What would be the implications on the value of the fishing companies involved?

Answer. As explained above, there will be a safety gain, an ecosystem gain, a consumer gain, and there should be a financial gain in the value of the companies. The basic reason for the financial gain, as explained in the Environmental Defense Fund letter, is that economic resources previously invested to improve success in a wasteful race for fish will be diverted to protecting the resources and improving the value of each fish harvested. Some specific ways to create value will include improved retention and utilization (recovery), timing harvest activity to market conditions, lowering bycatch, reducing human risks and injury, creating new products and improving quality.

*Question 7b.* What is the financial benefit, both immediate and long-term, to these companies?

Answer. Whether a vessel is owned by individuals in a family, partnership or corporation, I believe the EDF letter summary is correct and has been borne out by all the rationalized fisheries in the North Pacific. "When participants have a secure portion of the catch, they gain flexibility to make business decisions that improve safety, enhance the value of their asset, and promote healthy fishing stocks." As a result, fishing seasons will be extended, which "will stabilize fishing and processing jobs", bycatch will be reduced, safety will increase, environmental damage will decrease, "and economic performance increases substantially."

*Question 7c.* Would the formation of a co-op help the fishing companies involved in obtaining financing and loans to recapitalize their vessels?

Answer. Yes, we hope so. As indicated by support from financial institutions, catch shares, whether created by government in the form of IFQ or by private arrangement in the form of a voluntary cooperative agreement, have become recognized as value for collateralization of loans. This has allowed vessel upgrades that improve safety and new equipment that achieves better utilization of fishery resources. It will ultimately lead to vessel replacement which will bring the fleet into full compliance with modern safety and fuel efficiency standards.

*Question 8.* If the Pacific cod freezer longline fishery were to form a co-op, what would be the implications in terms of jobs?

Answer. Based on my experience with other catcher/process (CP) voluntary harvest coops (Pacific Whiting Conservation Cooperative and Pollock Conservation Cooperative), I believe the implications for jobs in the freezer longline sector managed under a similar coop system are very positive.

*Question 8a.* Would there be fewer jobs in the fishery?

Answer. Employment patterns in dynamic industries are constantly shifting, but the important point to be made is that good workers on freezer longliners are in short supply and in demand. As we increase sustainability through better recovery, quality, safety and new product forms, jobs on our vessels will be more steady, "professional" and lucrative. This has been the experience with the CP fleets in Pacific whiting and Alaska pollock fisheries and I believe will be the result in the freezer longline CP fleet. The dramatic consolidation and job loss experienced in the first years after implementation of Bering Sea crab rationalization may seem contrary to this prediction, but that situation was very different and, frankly, due to faulty fisheries management by the Council and State of Alaska. Most of the Bering Sea crab fisheries had been allowed to become extremely over-capitalized to the point where there were approximately 230 active vessels when only about 80 were needed to harvest the available resources. As a result, there was tremendous waste that needed to be wrung out of the system and much of that waste was exhibited in dangerous and very short fishing seasons and spectacles made popular by the "Deadliest Catch" television series. When rationalization finally came, the consolidation was dramatic. The freezer longline fleet is not anywhere near the extreme situation that prevailed in the crab fleet pre-rationalization. Instead, it is very much like the CP whiting and pollock fleets where, post-coop, there has been no noticeable loss in the number of jobs and where the jobs have in fact become more stable, professional and lucrative.

*Question 8b.* What would the quality and predictability of those jobs look like?

Answer. At this time, a freezer longline vessel in the open access cod fishery will fish an estimated 3 months in calendar year 2008. The "A" season was the shortest on record, as it was in 2007 and the year before that. The current situation is not good for anyone trying to earn enough to support a family. With a co-op system,

the employment opportunities will be more stable as fishing trips are lengthened by slowing the pace and producing more volume and value from the same resource. Without a co-op, under current circumstances, the race will continue, the jobs will become less desirable and it will be even more difficult for these vessels to find good crew.

Regarding employment issues, the recent report which we have made part of the record, published by Environmental Defense Fund in collaboration with noted economists, is particularly relevant. In general, it found that in every case studied economics improved after cooperative programs were initiated.

*Question 9.* Do you support allowing vessel replacement in the pollock catcher processor fleet and the head & gut fleet?

Answer. As I testified, I strongly support the vessel rebuild and replacement legislation for the AFA pollock fleet as has been passed twice by the House. I have not seen any proposed legislation or legislative language that would expand coverage to the H&G fleet, but I support it conceptually for vessels that will be in a harvest cooperative.

*Question 10.* How urgent is the need for vessel replacement legislation for the AFA and non-AFA fleets? Is safety an immediate concern for these fleets? What is the safety record of these fleets?

Answer. I believe on balance the AFA pollock fleet is the safest fleet of all vessels in the North Pacific commercial fisheries. All the catcher processors and motherships are loadlined and almost all are classed. They are well maintained and operated by trained professional personnel. The fleet's safety record is excellent. In that sense, safety is not the fundamental argument for this amendment. Having said that, these vessels have a "useful life". All pollock catcher processors and motherships are 18 years or older. Many of them are rebuilt on hulls that are more than 30 years old. And when they are replaced, the new vessels will be required to comply with evolved safety and fuel efficiency standards.

This proposed legislation has been passed twice by the House as part of Coast Guard authorization bills. There is no known opposition to its provisions. As I testified, it will allow the owners of these vessels to adopt efficient energy technologies, preserve family-wage value added processing jobs in the U.S. and allow the fleet to maintain its competitiveness in world markets by optimizing fishing operations.

*Question 11.* How would vessel replacement impact different companies in different ways in the AFA catcher processor fleet? Financially and competitively, how would vessel replacement benefit these fishing companies? Is it through higher or more efficient fish catches, or through additional fish processing that adds value to the product? Would vessel replacement benefit some companies more than others? How? How much would American Seafoods benefit compared to its competitors?

Answer. In the long view, the AFA vessel replacement amendment is relatively neutral regarding impact on the various owners of catcher vessels, catcher processors and motherships because, at some point, each vessel has a useful life and will need to be rebuilt or changed out. The amendment removes the unwarranted restriction in current law on vessel replacement only in the event of "total loss or constructive total loss" and provides flexibility to the vessel owner to replace the vessel in a manner that optimizes fishing and fish processing practices.

*Question 12.* Do you believe it is necessary from a public policy perspective to address the harvest cap at the same time as vessel replacement? How would it impact the competitive dynamics of the fleet? Are there any public policy benefits to raising the harvest cap? Are there any potential disadvantages?

Answer. Neither Glacier Fish Company nor I have taken a position with regard to this issue, *i.e.*, raising the harvest cap. It is my opinion there is no legitimate public policy rationale to link the issue with vessel rebuild.

#### ATTACHMENT #1

#### Past Council Actions.

#### **Bering Sea and Aleutian Island/Gulf of Alaska Halibut and Sablefish IFQ system**

Was in Council process for *ten years* and faced legal challenges for another 10 years after that.

#### **Bering Sea Crab**

Was in Council process for *eight years*. Is currently under review in council process again.

**Gulf of Alaska Rockfish**

Was in Council process for *four years*. Currently in pilot program that will need additional council work.

**Bering Sea Groundfish, Trawl H&G fleet**

Was in Council process for *six years* and currently faces legal challenges by Fishing Company of Alaska.

**Pacific Coast Groundfish**

Is in Pacific region Council process now and has been for the last *six years*. Still in process at present date.

**Gulf of Alaska Groundfish**

Is in process at North Pacific region Council. Has been in process for *six years*. Little to no progress to date. Moving toward sector splits, is currently on council agenda for sector splits but now for rationalization.

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 ATTACHMENT #2
**Council Three Meeting Outlook**

September 29, 2008 December 8, 2008 February 2, 2009  
 Anchorage, AK Sheraton Hotel Anchorage, AK Hilton Hotel Seattle, WA  
 Council/BOF Joint Protocol Committee Report (T)  
 SSL draft status quo BiOp: *Report on Schedule*  
 Comprehensive Data Collection: *Committee Report* Comprehensive Data Collection: *Action as necessary*  
 BSAI Fixed Gear Parallel Fisheries: *Discussion Paper* GOA fixed gear LLP recency: *Initial Review*  
 GOA P cod sector split: *Initial Review*  
 GOA sideboards for BSAI crab vessels: *Final Action* Am 80 Cooperative Formation: *Initial Review* Am 80 Cooperative Formation: *Final Action*  
 GOA sideboards re Am 80 PSC: *Initial Review* GOA sideboards re Am 80 PSC: *Final Action*  
 GOA sideboards re GOA rockfish: *Final Action* GOA Rockfish Program Changes: *Discussion Paper*  
 GOA sideboards for AFA CVs: *Discussion paper* GOA sideboards for AFA CVs: *Initial Review (T)* GOA sideboards for AFA CVs: *Final Action (T)*  
 AI Cod Processor Sideboards: *Discussion Paper (T)* AI Processor Sideboards: *Initial Review (T)* AI Processor Sideboards: *Final Action (T)*  
 AI POP/Mackerel Processing Sideboards: *Discussion Paper (T)*  
 BSAI Crab Regional Delivery Emergency Relief: *Discussion Paper*  
 BSAI Crab Committee/Crew Proposals: *Report/Action as necessary*  
 BSAI Crab 3-year Review: *Receive report*  
 BSAI Crab 90/10 Amendment: *Prelim. Review* BSAI Crab 90/10 Amendment: *Initial Review* BSAI Crab 90/10 Amendment: *Final Action*  
 BSAI Crab St. George Protection Measures: *Final Action*  
 BSAI Crab EDR: *Metadata & PNCLAC Report* Observer Program Restructuring: *Discussion Paper*  
 Halibut Sablefish 12-mo vessel ownership: *Initial Rev/Final Action (T)*  
 Charter Halibut Catch Sharing Plan: *Final Action*  
 Halibut 3A GHL: *ADF&G Report and Final Action if necessary (T)*  
 CDQ Program: *Update on Oversight Regulations* CDQ Program: *Action as necessary*  
 BSAI Chum Salmon Bycatch: *Discussion Paper (T)* BSAI Chum Salmon Bycatch: *Initial Review (T)*  
 BSAI Chinook Salmon Bycatch: *Review ICA Report*  
 Ecosystem Committee Report: *Action as necessary*  
 Arctic FMP: *Initial Review* Arctic FMP: *Final Action*  
 BS Bottom Trawl Sweeps: *Discussion Paper* BS Bottom Trawl Sweeps: *Initial Review* BS Bottom Trawl Sweeps: *Final Action*  
 P.cod area split (BS/AI): *Update and Action as necessary*  
 BSAI Crab SAFE Report: *Review and Approve* GOA Tanner & Chinook Bycatch: *Discussion Paper*  
 BSAI Skates Complex: *Initial Review (T)* BSAI Skates Complex: *Final Action*  
 5 Year Research Priorities: *Review and Approve* HAPC Review Criteria: *SSC Recommendations*  
 Groundfish Specifications: *Initial Action* Groundfish Specifications: *Final Action*

AK Native/Community Outreach: *Report & Action as nec (T)*  
 AI—Aleutian Islands TAC—Total Allowable Catch *Future Meeting Dates and Locations*  
 GOA—Gulf of Alaska BSAI—Bering Sea and Aleutian Islands September 29–, 2008 in Anchorage  
 SSL—Steller Sea Lion IFQ—Individual Fishing Quota December 8–, 2008 in Anchorage  
 BOF—Board of Fisheries GHL—Guideline Harvest Level February 2–, 2009 in Seattle  
 FEP—Fishery Ecosystem Plan EIS—Environmental Impact Statement March 30–, 2009 in Anchorage  
 CDQ—Community Development Quota LLP—License Limitation Program June 1–, 2009 in Dutch Harbor  
 VMS—Vessel Monitoring System SAFE—Stock Assessment and Fishery Evaluation October 1–, 2009 in Anchorage (AP, SSC start on THURSDAY)  
 NOI—Notice of Intent PSC—Prohibited Species Catch (Council on Saturday)  
 (T) Tentatively scheduled HAPC—Habitat Areas of Particular Concern

#### **North Pacific Fishery Management Council**

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 May 30, 2008  
*Draft Agenda*  
*188th Plenary Session*  
*North Pacific Fishery Management Council*  
*June 4–10, 2008*  
*Best Western Kodiak Inn*  
*Kodiak, AK*  
*Draft Agenda*  
*188th Plenary Session*  
*North Pacific Fishery Management Council*  
*June 4–10, 2008*  
*Estimated Time*  
*A. Call Meeting to Order*  
 (a) Approval of Agenda  
 (b) Approval of Minutes  
*B. Reports*  
 B–1 Executive Director's Report (3 hrs)  
 B–2 NMFS Management Report (including permit fee discussion paper, NEPA proposed rule and ACL proposed rule).  
 B–3 ADF&G Report  
 B–4 USCG Report  
 B–5 USFWS Report  
 B–6 NMFS Enforcement Report  
 B–7 Protected Species Report (including update on the BiOp schedule)  
*C. Major Issues/final Action Items*  
 C–1 Subsistence Halibut (1 hr)  
 Initial Review/Final Action on subsistence halibut rural definition.  
 C–2 Salmon Bycatch (8 hrs)  
 Initial review of BSAI Salmon Bycatch EIS.  
 C–3 BSAI Crab Issues (8 hrs)  
 (a) Initial Review/Final Action on fees for crab loan program.  
 (b) Receive Crab Committee Report (relative to the Western AI GKC underutilization, community ROFR, crew participation, and emergency relief); action as necessary. [*Note: Council and AP discussion/action will be limited to the four issues listed above.*]  
 C–4 GOA Groundfish Issues (8 hrs)  
 (a) Initial review of fixed gear recency.  
 (b) Initial review of Pacific cod sector split.  
 C–5 VMS exemption for Dinglebar (2 hrs)  
 Final action on VMS exemption for dinglebar gear.  
 C–6 Research Priorities (1 hr)  
 Review and adopt 5 year research priorities.  
 C–7 4E Seabirds (2 hrs)  
 Final action on 4E seabird avoidance measures.  
 NOTE: Council may take action as necessary on all matters listed on the Agenda

*D. Other Issues*

- D-1 Ecosystem Based Management (2 hrs)
  - (a) Receive report from Ecosystem Committee.
  - (b) Preliminary review of Arctic FMP. (Council only)
- D-2 GOA Sideboards (8 hrs)
  - (a) Initial review of GOA sideboards for BSAI crab vessels.
  - (b) Initial review of GOA sideboards regarding GOA rockfish fishery.
  - (c) Initial review of GOA sideboards for AFA CVs.
- D-3 Miscellaneous Groundfish Management (6 hrs)
  - (a) Committee report on other species management.
  - (b) Discussion paper on GOA crab and salmon bycatch. (Council only)
  - (c) Receive report on gear modification research.
  - (d) Review Discussion paper on Am 80 sector cooperative criteria.
  - (e) Report on halibut excluder EFP.
- D-4 GOA Rockfish Pilot Program (3 hrs)
  - (a) Receive report which reviews the Rockfish Pilot Program.
  - (b) Receive report on CGOA Rockfish EFP, phase 1.
- D-5 BSAI Crab OFL (SSC only) (0 hr)
  - (a) Receive Plan Team report on BSAI crab OFLs.
  - (b) Review Preliminary Crab SAFE report.
- D-6 Staff Tasking (4 hrs)
  - (a) Review Committees and tasking.
  - (b) Review PSEIS priorities workplan.
  - (c) Receive report on native/community/stakeholder participation.
- D-7 Other Business
- Total Hours: (56 hrs)

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
MICHAEL HYDE

*Question 1.* Do you support allowing vessel replacement in the pollock catcher processor fleet and the head & gut fleet?

Answer. These two fleets face very different issues. We support allowing vessel replacement in the pollock catcher processor fleet as long as it is part of a package that includes an increase in the pollock harvest cap. We support allowing vessel replacement in the head and gut fleet as long as the language includes sideboard restrictions that limit the impact of replacement vessels on other fisheries (similar to the sideboard provisions of the American Fisheries Act).

*Question 2.* For the record, why is legislation and Congressional action (rather than Council action) needed to allow the pollock catcher processor fleet to replace their vessels?

Answer. The American Fisheries Act includes a number of statutory limitations that can not be modified by Council action. The pollock harvest cap and the replacement vessel restrictions are included in this category and require Congressional action to change.

*Question 2a.* Under what circumstances can the AFA fishery companies currently replace old, dangerous, or inefficient vessels?

Answer. First of all, this is mostly a hypothetical question because there simply are no "old" or "dangerous" vessels in the AFA fleet. With respect to "inefficient" vessels, all of the current fleet is relatively efficient in the big picture but some, such as the American Seafoods fleet, are far more efficient than others. The current law does not allow for the "replacement" of existing vessels except in the event of an actual or constructive total loss but it does allow for the "rebuilding" of existing vessels. This means that the only practical limitations on increasing the efficiency of existing vessels is that the vessel would need to be taken out of service while it is being "rebuilt" and, because of the North Pacific Council's License Limitation Program, the length of the rebuilt vessel could not be increased.

*Question 3.* How urgent is the need for vessel replacement legislation?

Answer. From a safety perspective, there is no urgency whatsoever for vessel replacement legislation with respect to the AFA fleet. With respect to the head and gut trawl fleet and the head and gut longline fleet, vessel replacement is a valid issue from a safety perspective and some vessels should probably be retired soon. However, because there is considerable surplus capacity in the head and gut fleet, once those fisheries are rationalized, the least efficient/most unsafe vessels can be retired immediately without an immediate need for a replacement vessel. In the AFA fleet, vessel replacement is purely a matter of operating efficiencies. New ves-



sels will use far less fuel and will be equipped to make a greater variety of higher value products but they will not be safer than the existing vessels.

*Question 3a.* Is safety an immediate concern for this fleet?

Answer. With respect to the vessel replacement issue, safety is absolutely NOT a concern for the AFA fleet. Even the most ardent supporters of this legislation have acknowledged that this legislation is designed to allow companies to acquire more efficient vessels and is not a safety measure. Every AFA catcher processor is loadlined and already meets the highest safety standards in the world. There is nothing that would be done to improve safety in a replacement vessel that cannot or has not been done to the existing fleet.

*Question 3b.* What is the safety record of this fleet?

Answer. The safety record of the AFA catcher processor fleet is excellent. The only major vessel casualty that has ever occurred in the fleet was the 2007 fire aboard the Pacific Glacier. Although there was significant damage to the vessel, there were no serious injuries or loss of life in that incident and the cause was unrelated to the age of the vessel.

*Question 4.* Does American Seafoods agree that vessel replacement is a safety issue?

Answer. American Seafoods agrees that vessel replacement is a safety issue with respect to certain vessels in the head and gut trawl and longline fleets. Almost none of the vessels in those fleets are classed or loadlined and because of their physical age and characteristics they most likely could not be brought up to modern day safety standards. Unfortunately, the vessel replacement language that is in the House bill does not afford any relief for the fleet that actually needs it from a safety perspective. The current language applies only to AFA pollock vessels where vessel safety is NOT an issue. We believe that the House bill language should be broadened to include the head and gut fleets. Otherwise, the bill is only a vessel efficiency measure for AFA vessels, not a safety measure for all vessels.

*Question 5.* In your view, what kind of size, length and capacity requirements are reasonable for vessel replacement?

Answer. We believe that measures to restrict the economic or operating efficiency of fishing vessels should not be enacted unless they provide clear benefits that outweigh their cost and the benefits can not be achieved through less restrictive measures. Until there is some demonstrated benefit, we do not support limitations on length, tonnage and horsepower. Any concerns about the impact that larger vessels might have on other fisheries can be addressed through restrictions on the use of the vessel. For example, under the AFA, the catcher processor fleet is already tightly restricted on entering into any other fisheries and is limited to its historical share of the fisheries in which it was participating at the time of enactment.

*Question 6.* I understand that American Seafoods would like to see the harvest cap increased along with vessel replacement, but is opposing vessel replacement on its own. Why does American Seafoods believe the harvest cap is necessary to address at the same time as vessel replacement? How are the two connected?

Answer. All three of the proposed AFA amendments (vessel replacement, inshore permit stacking and harvest cap increase) address operating and economic efficiencies. None of them is a safety measure. As is common in fish legislation, industry participants promote legislation that benefits them and oppose legislation that benefits competitors. The benefits of each of the three proposed AFA amendments vary among industry participants. The vessel replacement language would be of greatest benefit to those companies with the least efficient vessels. Because American Seafoods has by far the most efficient vessels today, American stands to gain little or no benefit from the replacement vessel language. The inshore permit stacking provision would give the owners of AFA inshore catcher vessels the right to take the AFA catch history from one vessel and to permanently assign it to a second vessel. This is a huge benefit to the inshore catcher vessel owners because it allows them to permanently retire their least efficient vessels—but it provides no benefit to the seven catcher vessels in the catcher processor sector or to any of the catcher vessels in the mothership sector. The harvest cap increase is likely to benefit companies such as American Seafoods and Trident Seafoods that are currently harvesting at or near the cap and will benefit companies that would like to lease or sell harvest rights to American or Trident, but will be of little benefit to companies that are well below the cap and who do not intend to sell or lease quota.

When the AFA was originally adopted, it was a negotiated package that balanced the interests of all the participants. Any amendments to the AFA must preserve that balance. We believe that an AFA package that includes all three provisions protects that balance.

*Question 7.* From a public policy perspective, what are the reasons to raise the harvest cap and allow your company to catch a larger percentage of the total catch?

Answer. From a public policy perspective, restrictions on economic and operating efficiency should only be adopted if they serve a compelling objective and there are no less intrusive means to accomplish that objective. With respect to the harvest cap, we do not believe that either of these criteria is satisfied. At the time the AFA was adopted, there was a legitimate interest in "Americanizing" the fisheries in U.S. waters. Because American Seafoods was 100 percent foreign owned, there was a compelling interest in preventing further growth of a foreign owned company. Now American Seafoods is 100 percent American owned and has the greatest diversity of American owners of any participant in the Alaska fisheries. As mentioned in our written testimony, American Seafoods is now majority owned by two Alaskan CDQ groups whose owners are 21 communities along the Bering Sea coast and their more than 9,000 residents. These communities are among the poorest in the United States with little or no cash economy and extremely high poverty rates. An increase in the harvest cap has the potential to distribute the benefits of a public resource to far more individuals than occurs under the status quo.

With respect to the National Standards in the Magnuson-Stevens Act, an increase in the harvest cap will promote compliance with national standards 5 and 7 which require:

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The harvest cap at its current level forces operators to harvest fish on the less efficient platforms and prevents operators from tailoring their operations to reflect the best use of vessels at varying quota levels. It precludes the additional use of those vessels that can obtain the highest value and produce the most finished product from the harvested fish, thereby promoting waste and inefficiency.

An increase in the harvest cap would be expected to lead to better utilization of our fishery resources. As noted in Ms. Parker's testimony, several of the existing AFA catcher processors are not equipped with fish meal plants or boilers for making fish oil from the waste products. Any fish processed aboard such boats represents a waste of potential fish products and a loss in revenue to the owners and crew. Both the replacement vessel language and the increase in the harvest cap would increase the capacity and efficiency of the fleet.

*Question 7a.* Would there be any environmental consequences?

Answer. We believe that an increase in the harvest cap will result in positive environmental consequences. If the harvest cap is raised and more of the annual quota is harvested aboard American Seafoods' vessels, fish waste discharges will decrease. In addition, because of the larger freezer hold capacity on the American Seafoods vessels, fuel usage will decrease because fewer trips between port and the fishing grounds will be required.

*Question 8.* How would raising the harvest cap impact American Seafoods' business?

Answer. Because the Bering Sea pollock quota is already divided and assigned to individual operators under the provisions of the AFA, American Seafoods will not receive any additional harvest rights upon passage of the increase in the harvest cap. Only upon reaching an agreement with another AFA catcher processor to lease or purchase its quota will American Seafoods benefit from the increase. Because American Seafoods' vessels are far more efficient than certain of its competitors, we are hopeful that we will be able to arrange short or long term leases. If that occurs, we expect it will have a positive impact on several aspects of our business. If American Seafoods is able to purchase or lease additional harvest rights in years of lower quota, it will stabilize our marketing relationships and our crew employment. If the leases are at favorable rates, we expect that both American Seafoods and the quota holders will have higher earnings. If there are additional sources of quota for lease, the increase in the harvest cap may lessen American Seafoods' dependence on CDQ quota. Finally, as stated above, an increase in the harvest cap would potentially spread the benefit of harvesting a public resource to the more than 9,000 owners of American Seafoods.

*Question 8a.* How would it impact others in the industry?

Answer. We believe that the only impacts of an increase in the harvest cap on others in the industry will be either positive or neutral. As mentioned above, an increase in the harvest cap by itself has no impact on any other companies. It only gives American Seafoods an opportunity to lease or purchase quota above the cur-

rent 17.5 percent cap. Either of these transactions requires a willing seller or lessor on the other side of the transaction. Obviously, in such a transaction, both sides have concluded they are benefiting from the agreement. Another potential benefit is that in the event of a mechanical failure that forces a vessel out of the fishery mid-season, American Seafoods vessels would be able to harvest and process the quota assigned to the disabled vessel. The only companies that could argue they are harmed by an increase in the cap are those that hope to purchase or lease quota below full value in a market that currently excludes the most efficient purchasers and lessees. Legislation should not be designed to protect inefficient competitors.

*Question 9.* How would vessel replacement impact different companies in different ways?

Answer. As with an increase in the harvest cap, the vessel replacement legislation would have no immediate impact. The benefits of the legislation would only be enjoyed by those companies that choose to build a replacement vessel.

*Question 9a.* Financially and competitively, how would vessel replacement benefit these fishing companies? Is it through higher or more efficient fish catches, or through additional fish processing that adds value to the product?

Answer. Replacement vessels are likely to be far more efficient than existing vessels in several respects. Hull design, propulsion equipment and factory equipment have all been designed to use much less energy and to have higher capacities. A replacement vessel could be expected to have a much larger fish hold which would allow it to make fewer trips between port and the fishing grounds. This saves on fuel, labor expense and maintenance. The main engines will be diesel electric which will generate far greater horsepower on much less fuel. The processing factory would be sufficiently large to accommodate the latest processing technology and would use fuel-efficient electric motors instead of diesel. The factory would be far more automated than current factories which would result in significant savings in labor costs. A new vessel would be expected to have a higher horsepower main engine which would give the flexibility to fish at greater depths and in more areas. Although the amount of fish allocated to each company would not change, a replacement vessel could be expected to more successfully target schools of pollock with the highest processing value. In short, a replacement vessel would gain huge operating efficiencies over the majority of the exiting fleet through a combination of: (1) decreased fuel, labor and maintenance costs and (2) increased revenues from production of higher value finished products and the full utilization of all fish wastes.

*Question 9b.* Would vessel replacement benefit some companies more than others? How?

Answer. It will be extremely expensive to build a replacement vessel so only those companies with the least efficient vessels are expected to build such vessels in the near future. To illustrate the concept, consider the fuel efficiency of modern cars. Assume that the most efficient new car can achieve 50 miles per gallon. If there is no trade-in value on a used car, who is most likely to buy the new car: The car owner who is currently getting 10 mpg or the car owner who is getting 40 mpg. Obviously, the owner of the least efficient car should be the first to buy. It is predictable that this is what will happen in the AFA CP fleet. American Seafoods owns the vessels that are already getting 40 mpg. It is very unlikely that the increased efficiency of a new vessel will justify the cost. However, for the owner of the least efficient vessels, a replacement vessel makes immediate economic sense.

*Question 9c.* How much would American Seafoods benefit compared to its competitors?

Answer. American Seafoods is unlikely to enjoy any benefit from the vessel replacement language and in fact, is likely to suffer significant adverse impacts. As mentioned in Ms. Parker's testimony, because of the relative efficiency of its vessels, American Seafoods has been able to increase its share of the CDQ allocation from 5 percent pre-AFA to over 50 percent today. This CDQ quota is critical to the financial success of American Seafoods and access to this quota is highly dependent on the Company's ability to pay higher royalties. Because any replacement vessel will be more efficient than any existing vessels, it is predictable that the owners of replacement vessels will be able to out compete American Seafoods for CDQ quota and American Seafoods will be financially damaged. While an increase in the harvest cap will not remove this risk, it will enlarge the potential pool of available quota beyond just CDQ quota and will increase the opportunity for American Seafoods to remain competitive.

We believe that a fair and equitable package of fishery amendments must achieve the following:

1. Broaden the proposed AFA replacement vessel language to also apply to the head and gut trawl and longline fleets. Include with the broader language appropriate sideboards to prevent adverse impact from the replacement vessels on other fishery participants.
2. Broaden the proposed AFA inshore permit stacking provision to also apply to catcher vessels in the AFA mothership and catcher processor sectors. This is a much needed efficiency measure that should apply to all AFA catcher vessels, not to just a selected subset.
3. Increase the AFA harvest cap to match the AFA processing cap. Based on the North Pacific Fishery Management Council conclusion that 30 percent is an appropriate processing cap, the same standards should be applied to AFA catcher processors and the harvesting cap should also be set at 30 percent.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
DONNA PARKER

*Question 1.* Do you support allowing vessel replacement in the pollock catcher processor fleet and the head & gut fleet?

Answer. Arctic Storm Management Group is strongly supportive of the proposal to allow owners of AFA catcher/processors, catcher-only vessels and motherships to replace such vessels at their discretion and without limitations on length, tonnage or horsepower. The AFA vessel replacement provision is viable because all AFA-qualified vessels engaged in the Alaska pollock fishery participate in fish harvesting cooperatives. These cooperatives have a ten-year track record for ending the "race for fish," which has successfully resolved concerns of overcapacity in the fishery and provided quantifiable conservation benefits. Allowing flexibility in replacing or rebuilding AFA-qualified vessels will enable the fleet to further maximize yields from the harvested resource and increase the value of the Nation's largest fishery, while also helping the fleet to reduce costs, including reducing its use of diesel fuel.

Conceptually, Arctic Storm supports providing similar flexibility to the H&G fleet for the same reasons articulated above for the AFA fleet of vessels. However, there are at least two policy issues to be considered, and because the H&G fleet has not circulated its proposal publicly, it is difficult to say whether those issues are being addressed. The first issue pertains to fish harvesting cooperatives. While AFA vessels have a ten-year track record of full participation in fish cooperatives, 2008 was the first year that participants in the H&G fleet were in a regulatory regime that facilitated the formation of co-ops. Given this brief experience and the lack of 100 percent co-op participation by H&G vessels, the policy issue to be addressed is whether removing restrictions on vessel size for that fleet will incentivize a race for fish and undermine cooperative fishing.

A second consideration is the potential impact on other fisheries, regionally and/or nationally, of removing vessel size restrictions on the H&G fleet. Both the AFA and the proposed AFA vessel replacement amendment include significant restrictions on AFA-qualified vessels operating outside the Bering Sea/Aleutian Islands pollock fishery. There are no similar restrictions in the law for the H&G fleet. What are the ramifications of permitting this fleet of approximately two dozen vessels from being replaced with much larger vessels eligible to fish and process anywhere in the U.S.? Has the H&G fleet considered this issue? We do not know.

*Question 2.* For the record, why is legislation and Congressional action (rather than Council action) needed to allow the pollock catcher processor fleet to replace their vessels? Under what circumstances can the AFA fishery companies currently replace old, dangerous, or inefficient vessels? Could you please explain why vessel replacement was not allowed under the American Fisheries Act when that bill was negotiated and passed?

Answer. Congressional action, rather than Council action, is required because the American Fisheries Act cannot be superseded with action by a regional fishery management council. While the AFA did provide some discretion to the North Pacific Fishery Management Council in the development of implementing regulations, it provided no discretion on the issue of vessel replacement. Additionally, the proposed vessel replacement revisions include provisions to protect other fisheries outside the jurisdiction of the North Pacific Fishery Management Council.

Under current law, a vessel greater than 165 feet in registered length, or more than 750 gross registered tons, or that has an engine capable of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery endorsement unless a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective before September 25, 1997.

The AFA does provide for replacement vessels for AFA-qualified vessels—all of the catcher/processors and motherships and some of the catcher-only vessels exceed the thresholds cited above—under very limited circumstance. Section 208(g) of the AFA allows for the replacement of an AFA-qualified vessel only in the “event of the actual total loss or constructive total loss . . .” For AFA-qualified vessels over 165 feet in length, or more than 750 gross registered tons, or with engines capable of producing more than 3,000 shaft horsepower, the replacement vessel must be of the same or lesser registered length, tonnage and horsepower. Replacement vessels for the original vessels below those thresholds can increase length, tonnage and horsepower by 10 percent.

Because the restrictions outlined above are statutory limitations, fleet-wide relief for AFA vessels can only be provided through a change in the law.

The Committee poses a good question as to why such limits were adopted in 1998. With respect to the vessel replacement restrictions in Section 208(g), one possible explanation is that Congress was unsure whether the fish harvesting cooperatives contemplated in the AFA would work effectively, and in 1998, a core concern in pollock fishery management was overcapitalization. As noted above, fish harvesting cooperatives have been exceedingly successful, and a return to a “race for fish” and attendant excess harvesting and processing capacity is not a valid concern. As for the overall fishing vessel size limits in law, there is no apparent public policy rationale. Limited Access Privilege Programs and fish harvesting cooperatives are much more effective conservation and management tools than arbitrary vessel size limits.

*Question 3.* How urgent is the need for this legislation? Is safety an immediate concern for this fleet? What is the safety record of this fleet?

Answer. The AFA vessel replacement provision has been fully vetted. The language has twice passed the House as a provision in Coast Guard authorization bills. There is no known opposition to the measure. Adoption of the provision would help vessel owners in the largest U.S. fishery to more effectively combat rising diesel fuel prices, preserve family-wage, value-added processing jobs in the U.S., and allow the fleet to maintain international market competitiveness by optimizing fishing operations, including employing state-of-the-art technology. These are compelling arguments for Congress to enact the AFA vessel replacement provision as soon as possible.

While safety is always a high priority for the AFA fleet, as well as other fishing fleets, it is not the issue driving this amendment. While it is true that few AFA-qualified vessels entered the fishery since 1990, vessels are well-maintained. The overall safety record of the fleet is excellent.

*Question 4.* From a public policy perspective, what are the reasons (if any) to raise the harvest cap and allow a company to catch a larger percentage of the total catch than what is currently allowed under the American Fisheries Act? Would there be any environmental consequences?

Answer. There are no legitimate reasons to raise the harvest cap and allow a company to catch a larger percentage of the total catch than what is currently allowed under the American Fisheries Act. A single company, American Seafoods, seeks to expand its harvesting rights beyond the established cap. To most other participants in the fishery, such an increase would not represent good public policy for several reasons.

Harvesting caps continue to be important management tools. The 17.5 percent AFA harvesting cap imposed on the Nation’s largest fishery is generous when compared to the 1 percent and 2 percent harvesting caps in the Bering Sea crab fisheries and the North Pacific halibut and sablefish IFQ programs. A comparison to the AFA harvesting cap with the processing cap of 30 percent is flawed. There are approximately 130 AFA vessels qualified to harvest Bering Sea pollock and only a half dozen shore-based processors. While a 30 percent processor cap may be appropriate for a much smaller class of processors, it is entirely inappropriate for the much larger class of eligible harvesting vessels. Increasing the harvesting cap will promote increased consolidation in general, including processor-owned catcher vessel fleets, by undermining the ability of smaller, independent entities to successfully compete for the purchase of vessels and harvesting rights with larger corporations. Such domination by processors could impact the ability of independent catcher vessels to negotiate ex-vessel prices. Such a scenario could destabilize the balance struck in the development of the AFA.

The AFA ended a highly contentious allocation battle between sectors and brought balance, stability and prosperity to the pollock fishery. AFA represented a carefully crafted compromise that has led the pollock fishery to be acknowledged as one of the best managed fisheries in the world. A key component to that compromise was a \$90 million payment to American Seafoods to permanently remove nine of the 16

vessels from the fishery reducing its historical harvest share to 17.5 percent. American taxpayers paid American Seafoods \$20 million and the remaining \$70 million is a federally guaranteed loan still being repaid by catcher vessels participating in the inshore fishery. This action accomplished two goals; it reallocated an additional 10 percent of the pollock fishery to the inshore sector and it reduced the dominance of a single company, American Seafoods, in the Nation's largest fishery. It also allowed American to divest itself of its most inefficient vessels, leaving it with the most state-of-the-art fleet in the fishery.

It should also be noted that in harvesting 17.5 percent and owning 19.36 percent of the pollock fishery, American controls about 50 percent of the offshore sectors' allocation. Additionally, American is unconstrained from harvesting an additional 10 percent of the Bering Sea catch limit by leasing Community Development Quota. American Seafoods currently controls one-half the CDQ pollock quota, or an additional 5 percent of Bering Sea quota above the harvest cap. Because harvest of CDQ fish is not constrained by the AFA harvest cap, American Seafoods could increase its harvest share another 5 percent of the Bering Sea pollock quota without having to increase the current excessive harvest share cap. American currently owns 19.36 percent of the Bering Sea pollock quota through ASC LLC and its wholly owned subsidiary, HLTA LLC. And nothing prohibits American from increasing its processing capacity, including the purchase of shore plants, to 30 percent.

In sum, American Seafoods currently owns 19.36 percent of the harvesting and processing rights of the Nation's largest fishery. Additionally it harvests and processes about half of the CDQ allocation, or another 5 percent of the pollock fishery. It is unconstrained from increasing its CDQ harvesting share, its processing share or its ownership share. There still remains significant growth opportunity for American Seafoods without increasing the excessive harvesting cap.

For our company and others, this issue is simply one of putting too much control in the hands of too few. At some point, a much larger company puts smaller companies at a significant disadvantage and destabilizes the fishery. For the Bering Sea pollock fishery, that point has been established at 17.5 percent of the harvesting capacity. The majority of Bering Sea participants have not been persuaded that a compelling reason exists to change that excessive share limit. We continue to believe that a cap set at 17.5 percent is a critical part of the AFA package and its continuance at this level, good public policy.

*Question 5.* How would raising the harvest cap impact your company's business? Do you oppose American Seafoods' efforts to raise the harvest cap?

Answer. Arctic Storm, as do most other participants in the pollock fishery, continue to oppose American Seafoods' efforts to raise the harvest cap for the reasons described above. Raising the cap could impact our company in several ways. Among those are the following:

1. A much larger company has a disproportionate impact on the marketplace in which we all compete.
2. A much larger company has a disproportionate advantage in increasing its share of fish by either winning CDQ allocations or purchasing other companies. Such dominance, if unconstrained, could marginalize smaller companies causing further consolidation by a few large players. Consolidation by American has already occurred. Since AFA was passed American has purchased three additional AFA vessels increasing its ownership of the harvesting and processing rights to 19.36 percent of the Bering Sea pollock quota. It has also increased its CDQ share from 5 percent to 50 percent.

*Question 6.* How would vessel replacement impact different companies in different ways? Financially and competitively, how would vessel replacement benefit these fishing companies? Is it through higher or more efficient fish catches, or through additional fish processing that adds value to the product? Would vessel replacement benefit some companies more than others? How? How much would American Seafoods benefit compared to its competitors?

Answer. Most AFA vessels were built in the 1980s including some that were rebuilt from much older vessels. Confining their operations to business plans and technology available thirty years ago does not make sense in a global economy. In any modern business, in order to remain competitive you have to operate efficiently. Under the current restrictions of the AFA, vessel owners are often constrained by space limitations that force them to operate less efficiently. For instance, smaller boats are constrained in their ability to operate both surimi and fillet lines to meet the needs of the market and the appetites of the U.S. consumer. Space limitations also constrain the ability to install fish meal plants that allow full utilization of the fishery byproducts, fish oil plants that convert fish waste into a substitute for diesel

fuel, and increased cargo hold capacity which reduces the amount of trips required to unload the vessel.

For instance, one of our catcher-processors, the Arctic Fjord packs 920 tons of finished product while the larger, Arctic Storm, packs 1540 tons. That difference in capacity forces the Fjord to make five additional trips a year to and from the fishing grounds to unload product using approximately 220,000 gallons of fuel. At current costs of \$4.20/gallon, these trips increase operating costs substantially. It also contributes to unnecessarily extending our carbon footprint at a time when reduction of carbon usage has been identified as a high priority. Related to that issue is needed space to construct a fish oil conversion plant. Use of fish oil to fuel a catcher-processor is expected to offset diesel fuel consumption by 1,200 to 2,500 gallons a day. Like several other AFA catcher-processors, the Arctic Fjord is not large enough to accommodate construction of a fish meal plant without rebuilding the hull. Fish meal plants turn fish waste into fish food for aquaculture operations in Asia. It also increases our recovery rates by approximately 2.5 to 5 percent of round weight.

For a catcher vessel, increasing vessel size allows for greater hold capacity and so reduces the number of trips needed to harvest its catch quota. The proposed amendment also contains a provision that allows for retirement of less efficient and aging vessels. Currently, AFA requires that the owner of a catcher vessel delivering to a shoreside cooperative maintain that vessel and permit in order to receive its annual allocation of pollock. The AFA vessel amendment allows AFA-qualified catcher vessels to be retired and for the owners of such vessels to assign the quota to another vessel or vessels. To avoid negative impacts to other fisheries, any retired AFA-qualified vessel must surrender its fishery endorsement and so cannot participate in other U.S. fisheries.

Because current regulations prevent us from replacing our existing vessels, we must replace parts of the vessels piece by piece as they wear out. We are forced to figure out how to make these hulls last forever without the opportunity to take advantage of more efficient technology available to our industry. While the AFA fleet is operated and maintained to ensure maximum safety conditions, it seems counter to the promotion of the safety of human life at sea, as called for in National Standard 10 of the Magnuson-Stevens Act, to prohibit AFA-eligible vessels from being replaced or efficiently rebuilt using state-of-the-art technology and architectural designs that can simultaneously accomplish premium safety and efficiency.

The arbitrary limits on length, tonnage and engine horsepower of replacement vessels stipulated in the AFA are unnecessary. To help foster safety, product quality, innovation and efficiency—all of which contribute to Alaska pollock producers remaining competitive in the international whitefish market—it is critically important to remove limitations in current law on replacement of AFA-qualified vessels.

As described above, vessels will be affected in similar and different ways but, nonetheless, will require significant investments to rebuild or replace vessels. As part of AFA, American Seafoods' most inefficient vessels were bought-out by American taxpayers and other participants in the fishery. For that reason, American's remaining fleet under AFA has been and remains the most state-of-the-art fleet. If the vessel replacement legislation is passed it will, in part, retain that advantage because it will not have to make vessel replacement investments as soon as other participants. And, because the pollock fishery is rationalized, no participant will gain advantage over another in a race for fish initiated by the construction of more efficient vessels.

*Question 7.* Do you believe it is necessary to address the harvest cap at the same time as vessel replacement? How would it impact the competitive dynamics of the fleet? Are there any public policy benefits to raising the harvest cap? Are there any potential disadvantages?

*Answer.* There is no reason to address the harvest cap issue at the same time as the vessel replacement issue. The harvest cap and the vessel replacement provisions are two separate and unrelated issues.

The argument linking the two provisions is that American Seafoods Corporation will lose a competitive advantage because it currently owns the most state-of-the-art vessels. American Seafoods argues that if this competitive advantage is taken away by allowing other vessels to modernize, it should be given relief by raising the AFA excessive harvesting cap and allowing American Seafoods to regain advantage through company expansion. This rationale seems based on the assumption that American Seafoods has been granted a permanent competitive advantage and that other vessels must be constrained in their ability to compete in the marketplace. Even if such a rationale could be supported, the AFA vessel replacement amendment is relatively neutral regarding the impacts among companies that own and operate AFA-qualified catcher-only, catcher/processor or mothership vessels.

At some point, every vessel in the fishery will reach the end of its useful life. The amendment proposed by AFA participants removes the unwarranted restriction in current law on vessel replacement only in the event of “total loss or constructive total loss” and provides flexibility to the vessel owner to replace the vessel in a manner that optimizes fishing and fish processing practices. Taking the long view that every AFA-qualified vessel will need to be substantially rebuilt or replaced at some point, the vessel replacement provision should provide the same flexibility and opportunities among companies in the catcher/processor sector and not confer benefits on one company or one sector.

Looking just at the catcher/processor sector, here is why allowing the replacement of vessels at the owner’s discretion and without arbitrary size restrictions should not significantly impact competitiveness among the five companies operating catcher/processors. One would expect that companies with older and/or smaller vessels would be the first to take advantage of the vessel replacement amendment, if enacted. There are several obvious benefits to replacing older vessels with newer ones, including reduced maintenance costs and introduction of more fuel efficient propulsion systems. Replacing smaller vessels with larger ones will allow for new or substantially rebuilt vessels to accommodate both surimi and fillet production, add fishmeal plants, enhance fish oil production to reduce diesel fuel use, and increase hold capacity to reduce the number of trips for offloading. Surimi and whitefish fillets are commodity products, however, so vessel replacement is not expected to result in supply changes that will move world market prices. Instead, any company making the investment to increase vessel size to be able to make either of the two main primary processed forms of pollock or more ancillary products should increase profitability, but not at the expense of another company with similar or even greater capabilities.

For the reasons outlined above, the AFA replacement provisions are supported by all participants in the affected Bering Sea pollock fishery. The proposed language has been well vetted and includes detailed language which protects participants in other fisheries by limiting the access of new vessels in other fisheries. Increasing the AFA excessive harvesting cap, on the other hand, provides advantage to a single company and is opposed by most participants in the Bering Sea pollock fishery who perceive any link as artificial.

American Seafoods argues that in allowing modernization of its AFA competitors, it will be put at a competitive disadvantage by allowing others to compete on a level playing field for CDQ quota, leasing rights and expanded ownership. In this regard, American may be right; vessel replacement may level that playing field.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
DAVID E. FRULLA

*Question 1.* The Freezer Longline Coalition has been negotiating a fishing cooperative agreement for over 2 years, and is now asking Congress for help in passing legislation on the matter. Could you please describe, from your perspective, the process the Freezer Longline Coalition has gone through over the past 2 years, and Fishing Company of Alaska’s participation in this process?

Answer. I know only that discussions have been ongoing for quite awhile, and The Fishing Company of Alaska has participated in these discussions. FCA has raised objections in these discussions, including certain of those that my written and oral testimony explained. FCA believes it has participated in good faith in these discussions with others in the sector. Ultimately, FCA has a different view of the merits of the situation.

*Question 2.* What are the public policy implications of the creation of a co-op in the Pacific cod freezer longline industry? If there are public policy benefits, then why does the company believe policy-makers such as myself should not allow or promote the formation of a co-op? Does the company disagree with claims that there are safety and environmental benefits to the formation of a co-op?

Answer. I am not an expert in the public policy benefits of cooperatives, or their potential safety and environmental benefits, and was not asked to testify in such an expert capacity. I have represented a number of fishery organizations and businesses over the years, each with different views of this issue. In general, however, the position that FCA has advocated is that Congress established and reauthorized the Magnuson-Stevens Act to create an open and public framework for deciding these issues with full input by expert resource managers, scientists, economists, environmentalists, the broader public, and impacted fishermen. This process was refined by Congress in 2006, specifically to deal with this type of proposal.



By contrast, in this specific instance, the details of the cooperative were worked out in private discussions and would lock FCA into an allocation set by its competitors using a flawed methodology that completely derogates historical participation. This is not good public policy.

*Question 3.* If a co-op were formed in the Pacific cod freezer longline fishery, who do you believe would be the winners and losers? What would be the implications on the value of the fishing companies involved? What is the financial benefit, both immediate and long-term, to the companies involved? Would the formation of a co-op help the fishing companies involved in obtaining financing and loans to recapitalize their vessels? Do you believe that the Fishing Company of Alaska would benefit in any way under a cooperative system?

Answer. Others on your panel have made a study of these issues. In my written and oral testimony, I explained the legislative proposal would make permanent the impact of recent entry into this fishery sector and that such a result is contrary to North Pacific Fishery Management Council and NMFS regulatory actions and goals.

As to the final question, while there are cooperative programs under which FCA could benefit, the flawed approach crafted by the FLC is not one of them.

*Question 4.* If the Pacific cod freezer longline fishery were to form a co-op, what would be the implications in terms of jobs? Would there be fewer jobs in the fishery? What would the quality and predictability of those jobs look like?

Answer. In general, consolidation would likely lead to fewer jobs. The purpose of rationalizing a fishery is to reduce capacity and inputs to production, including labor. I understand that such losses of jobs and opportunities appear to be behind the on-going reaction by some fishermen and communities in Alaska against crab rationalization and other such programs.

*Question 5.* In your written testimony, you stated that “the FLCC proposal does not purport to allocate Pacific cod beyond this split between the cooperative and ‘open access’ components of the sector, such as on an individual vessel basis, and does not allow for the formation of other cooperatives. Accordingly, it is an incomplete solution to the safety issues about which this hearing is concerned.” This statement seems to imply that the FLCC proposal would be an “incomplete solution” because a race for fish would still exist in the “open access” component of the sector. Yet, the Fishing Company of Alaska is the only company that has not signed the cooperative agreement. If Congress takes up the FLCC proposal and that proposal becomes law, would Fishing Company of Alaska still refuse to enter the cooperative and remain fishing in the “open access” portion of the fishery? This being the case, wouldn’t Fishing Company of Alaska merely be “racing” itself if the FLCC proposal became law? Do you have any evidence or reason to believe that anyone other than Fishing Company of Alaska would not take part in the fishing cooperative under the FLCC proposal? Since Fishing Company of Alaska’s boats would essentially not be competing with anyone else, wouldn’t the “race” be effectively ended and represent a complete solution to the race-for-fish safety issues?

Answer. Respectfully, the questions misapprehend the point I was making: the legislative proposal, as we understand it, differs from how such rationalization programs are typically structured. Such programs usually make allocations on an individual vessel basis, according to a common qualification period. Under a cooperative approach, such as Amendment 80 to the Bering Sea/Aleutian Island groundfish plan, vessels may either bring that allocation into a cooperative or join it with others in a common pool. FLC’s proposal lacks the initial allocation. Accordingly, if the cooperative were to fail, or if certain of its members were to drop out of the cooperative in this historically fractious sector, the fishery would revert to a race for fish in the common pool.

Obviously, because, to our knowledge, the legislative proposal on which this hearing was held has not been drafted into legislation, my testimony must be somewhat hypothetical on this point. However, as far as FCA can tell, no one appears to have asked important questions about this proposal, such as: will (or could) the legislation require all vessels originally in the cooperative to remain within the cooperative, or would it be possible for a vessel with a low allocation of fish to leave the cooperative and fish in the open access sector, as is occurring in the Amendment 80 fishery? What are the public policy issues involved in irrevocably binding a vessel or owner to a cooperative, if that is what is intended? Would the legislation provide that all vessels owned by a single entity either remain in the cooperative or fish in the common pool (that is, an “all in” provision)? Will the legislation specify vessel use caps, excessive share limits, and sideboards? What, if any, monitoring and enforcement requirements will be established? Many of these questions are not relevant, however, if the Congress opts to develop a far more flexible individual quota system, as FCA has recommended, based on fair and equitable allocation criteria.

*Question 6.* From what I understand, the FLCC membership agreement offered an allocation level to Fishing Company of Alaska that would give the company's boats the fourth-highest and sixth-highest allocations and would give the company overall 7.1 percent. Does Fishing Company of Alaska believe that membership agreement allocation was not a fair one? Wasn't this offer of 7.1 percent an offer of additional fish from other members of the sector to help appease Fishing Company of Alaska's problems with the allocation share and as an incentive to join the co-op? Doesn't this demonstrate that the rest of the sector made a good-faith effort to address FCA's concerns and try to find a compromise? Why was this offer rejected by Fishing Company of Alaska? What allocation level for Fishing Company of Alaska's two vessels would have been a fair allocation? Specifically, what percentage, why, and based on what rationale? How does the membership agreement offer of 7.1 percent compare with what Fishing Company of Alaska's vessels are catching now, on a percentage basis?

Answer. As I explained in my testimony, the 7.1 percent share appears to have been an ad hoc adjustment to an allocation based on a qualifying period that FCA does not accept as fair, equitable, or consistent with the law or recent allocations. FCA has not asked for anything more or less than what it considers appropriate based on its history as a pioneering participant of this sector. My testimony points out a range of baseline periods that could have been more appropriate. This is FCA's principled, consistently-expressed position, notwithstanding FLC's derogatory characterizations and insinuations.

*Question 7.* Based on your testimony, Fishing Company of Alaska believes the co-op percentage allocations should have been based on a much longer time-period, or "qualifying time," than the final agreement was based upon. Why does the company believe that the time-span that was used is unfair? What time-span would the company believe is a fair one and why? What kind of allocation do you believe such a time-span would result in for Fishing Company of Alaska?

Answer. As I stated in my written and oral testimony, and has been conveyed to Committee staff through written and oral communications over the past nearly 2 years, the use of a 3-year time span, as proposed by FLC, is inconsistent with legal standards and recent precedent. This precedent includes not only the range of rationalization programs mentioned, but also the (then) FLCC's use of a five-year time-frame to used to calculate (and bolster) the amount of capacity ostensibly bought with the federally-funded vessel buyback program for the freezer-longline sector.

However, since the Subcommittee has inquired, FCA believes the very most equitable qualification period would include all history going back to the time-frame used for the vessel moratorium program; that is, January 1, 1988. This would provide full representation of the historical participants, while also considering recency, as the MSA provides. Such a period would not over-weight the new capacity that entered the fishery in a significant way after the LLP program. Nor would such a longer time period conflict so patently with other North Pacific Council and NMFS attempts to limit capacity in this sector (see my response to question 11, as well), while balancing historical participation and investment with recent use.

Any individual vessel allocation under such a time-frame would depend on a variety of considerations, such as whether all years were included or whether the low years were dropped, what dataset was used, and other factors that are customarily considered in these rationalization processes.

*Question 8.* It is my understanding that under FLCC's proposal, using the years 2003–2005 for those in the "open access" fishery would probably give Fishing Company of Alaska approximately 6.6 percent of the catch. How does that figure compare with what the Company is catching now? If Fishing Company of Alaska believes that 6.6 percent is unfair from using the years 2003–2005 as you state in your testimony, then why doesn't the company accept the FLCC membership agreement allocation offer of 7.1 percent?

Answer. Please see my responses to questions 5 and 6, as well as 16 U.S.C. § 1881a(b).

*Question 9.* You state in your written testimony that the allocation period contained in FLCC's proposal is "inconsistent with law and recent allocation programs." Wasn't a three-year period (1995–1997) used in the American Fisheries Act? You reference the Amendment 85 Gulf of Alaska cod allocations, but weren't those both sector allocations and not cooperatives or vessel allocations? Why should Congress use sector allocations as a guide for the allocation of a cooperative-based system? Isn't this comparing apples to oranges?

Answer. The AFA is not a recent rationalization program. In fact, it is poor model on which to base any such new program. While the AFA worked out well for those

included, it created a great deal of acrimony in the fishing industry and years of work for the Council. Just like the legislative proposal currently before the Committee, the AFA omitted many of important management and implementation details. In fact, the congressionally authorized rationalization programs, including the AFA, the “Three Pie” crab rationalization measure, and the Rockfish Pilot Program, appear to be more controversial than council developed programs. Perhaps this is because they closed debate and informed deliberation of issues of public importance that the fishery management council system is intended to provide.

Programs developed subsequently to the AFA, that is, the “recent” rationalization programs which I detailed in my written testimony, have benefited from the experience gained from the problems relating to the AFA and its implementation.

As to Amendment 85, this measure did make allocations among sectors rather than individual vessels. But the legal framework for making allocations is, or at least was when Amendment 85 was passed, identical to that involving individual vessel allocations. To be more precise, the MSA establishes the legal framework for making allocations either to sectors or vessels. However, that legal framework has changed since Amendment 85 was adopted, with the Reauthorization Act creating a specific new criteria applying to limited access privilege programs (“LAPPs”). FLC’s proposal would likely be governed by these LAPP provisions, 16 U.S.C. § 1853a, whereas a sector allocation like Amendment 85 would likely be governed by the general criteria under 16 U.S.C. § 1853(b)(6). Both sections 1853a and 1853(b)(6), however, require the consideration of historical participation that is utterly lacking in the FLC proposal, as well as development through the kind of open and public process that’s lacking in FLC’s *ad hoc* allocation scheme.

*Question 10.* Your written testimony references the Rockfish Pilot Program, which used a seven-year allocation period. That program, however, was designed to specifically weigh heavily toward historical catch and much less toward current and recent catch levels. Wasn’t the historical catch emphasized for this program because of the specific nature of the fishery, and for reasons not really applicable to the Pacific cod freezer longline sector? How is the Rockfish Pilot Program applicable when it’s only a temporary program for a very different fishery that has both catcher vessels and catcher-processor vessels that use multiple types of fishing gear? According to the North Pacific Fishery Management Council’s May 19, 2008 review of the Rockfish Pilot Program, the program’s first year had mixed success. Why should the North Pacific cod freezer longline fishery emulate a program with such mixed success?

Answer. I do not know enough about the motivations behind the adoption of the Rockfish Pilot Program to answer these questions without speculating. However, none of the supposed distinguishing characteristics mentioned above appear to be relevant to the policy reasons for selecting the qualification period that was, in fact, chosen for the program. Also, from my brief review of the referenced report, it does not appear that any of issues or complications arising from the program are the result of the range of years used to determine allocations.

*Question 11.* In your written statement, you discuss more recent entrants into the fishery and state that “it is not clear how these vessels became qualified.” Are you saying that some of these vessels were not qualified to enter the fishery? Do you have any information or knowledge that any of these vessels entered the fishery illegally? How are “recent entrants” relevant to this debate when the fishery now operates under a limited license program? If all of the entrants into the now-closed fishery entered the fishery legally and qualified based on the rules, why should Congress penalize more recent entrants in an allocation?

Answer. The National Marine Fisheries Service administers the license limitation permit program, and it, along with the Coast Guard, enforces fisheries regulations and laws. I would assume that if any vessels were fishing illegally, these authorities would take appropriate action. The point I raised was more generally related to the fact that the sector contains new vessels, and that the LLPs used in the fishery are difficult to trace back to the beginning of the permit moratorium and the period in which vessels were qualified for the LLP program and the Pacific cod endorsements. This observation was raised in relation to the more salient point that there were ten permits that appear to have qualified for the freezer longline sector based on only 1 year’s worth of landings. I understand these permits are currently placed on very efficient vessels that participate annually in the fishery on a full-time basis. This outcome completely undermines the efforts by NMFS and the North Pacific Council to reduce excessive capacity in this sector, via the moratorium, LLP program, and sector endorsements.

The question FCA has legitimately and consistently asked, then, is whether Congress should reward businesses that made large, post-LLP investments by awarding shares based solely on recency. FCA maintains that Congress would be sending a

poor signal by instituting a program that ignores and devalues historical investment and participation. In short, it would send a message to vessels in other fisheries that they can be rewarded by beefing up capitalization in a fishery, racing to build recent fishing history, and seeking an end-run around the MSA processes and standards by seeking legislation to enshrine the new regime. Meanwhile, participants like FCA that were involved in pioneering the fishery and providing a model that others followed, would be, in fact, the party that would be penalized by having that history completely devalued.

*Question 12.* In your arguments against overcapitalization and past initiatives for the vessel buyback and qualification levels for the LLP, you state that “all this new capitalization has had the effect of eroding FCA’s recent overall share of the Pacific cod catch.” This seems to be more of an argument outlining Fishing Company of Alaska’s dissatisfaction with past decisions on the LLP and buyback program, rather than an argument against how to proceed with managing the fishery as it currently exists. Why should Congress give weight to Fishing Company of Alaska’s complaints about these past decisions in its policymaking to shape the fishery’s future? If Fishing Company of Alaska was dissatisfied with the buyback program, then why didn’t the company vote in the buyback or comment in the public comment period before the program was funded?

*Answer.* The response to question 11 is likewise relevant here. The issue is not related to the policy decisions that were made, but whether it represents good public policy to reward recent increases in capacity. While the capacity reduction programs may not have had the intended effect, that is not a reason to freeze this advantage in place through legislation.

As to the question related to the buyback, I know that FCA made its concerns known to others in the sector. It is extremely unlikely that additional public disagreement would have changed the substantive result of the process.

*Question 13.* In your written testimony you stated that FLCC’s proposal “in no way comports with existing law” and “is legally doubtful,” but you have also argued that the North Pacific Fishery Management Council should take up the issue rather than Congress. Do you believe that if the Council took up FLCC’s proposal, it would be doing so contrary to current law? Would Fishing Company of Alaska take legal action to challenge such an action by the Council? Isn’t this an argument that legislation from Congress would be the most clear-cut way to implement a cooperative?

*Answer.* If the Council undertook the task of devising a cooperative program for the freezer longline sector, it would likely follow in the footsteps of prior such programs, like Amendment 80 for the head-and-gut sector. If past is prologue (particularly in light of the new requirements contained in the Magnuson-Stevens Reauthorization Act), the Council would allocate fish on an individual vessel basis using a qualification period consistent with the new limited access privilege program requirements established by the Act as amended in authorizing the formation of co-operatives. Such an action would likely address sideboards, excessive use and excessive share issues, as well as monitoring and enforcement. What has been proposed does not nearly come close to addressing all the details that need to be addressed; nor does FCA believe the proposal in substance complies with the amended MSA’s substantive requirements for LAPPs. Accordingly, Congress legislating FLC’s proposal would only be a “clear-cut way” to avoid the new Reauthorization Act standards for co-operatives and to avoid subjecting the FLC’s proposed allocations to debate, deliberation, and scrutiny in light of precedent at the North Pacific Council. However, if the AFA provides any experience, legislation such as the FLC seeks would still require the Council to develop the ancillary but important implementation details for the program.

*Question 14.* The FLCC membership agreement signed by all participants except Fishing Company of Alaska has a threshold of 75 percent required to dissolve the agreement. Yet, you stated that “if the parties in this typically fractious sector were to dissolve the cooperative, the sector would revert to the status quo and the legislation would have accomplished nothing.” Wouldn’t it take a significant supermajority of parties wanting to dissolve the cooperative agreement for cooperative legislation to “have accomplished nothing?” Do you have any specific reasons to believe that the FLCC cooperative agreement will fail and be dissolved?

*Answer.* This question raises an issue similar to that addressed above in response to question 5. In sum, because the proposal does not purport to fully allocate the fishery, if the cooperative were to dissolve or its membership base were to erode for any number of reasons, the result would be a return to a race for fish in the common pool. Neither we nor anyone else can predict the future, but this does not change the underlying point.

*Question 15.* You stated a belief that the FLCC proposal is flawed because it does not fully allocate Pacific cod among all sector participants. Isn't the point of forming a fishery cooperative to allow the sector to allocate fish through collective agreement, rather than forcing the government to get involved and decide who gets what? Does this statement mean that Fishing Company of Alaska is fundamentally opposed to cooperatives no matter what the conditions, and would only accept individual fishing quotas? If so, why is FCA fundamentally opposed to cooperatives?

Answer. The MSA lays out specific criteria for fishery allocations, including establishment of criteria to govern intra-cooperative allocations—vessel use limitations, for example—to achieve important public policy objectives such as protecting fishing communities and participants. At the end of the day, the government has a role in this process because this issue involves a public resource.

FCA is not inalterably opposed to cooperatives. It has formed a cooperative under the Rockfish Pilot Program.

*Question 16.* In your written testimony you stated that Fishing Company of Alaska could potentially support an individual fishing quota “with authorization to form a cooperative,” and point to the BSAI groundfish fishery as an example of such a system. Doesn't the FLCC proposal mirror the BSAI groundfish plan by allowing a co-op (or in the case of that fishery, allowing up to 3 co-ops) but also allowing a race for fish for those who do not wish to participate in a cooperative? Has Fishing Company of Alaska engaged in legal challenges against Amendment 80 and the BSAI groundfish plan? Isn't Fishing Company of Alaska still “racing” for fish in the BSAI groundfish plan because it has refused to enter into that sector's cooperative?

Answer. The FLC's proposal is fundamentally different from the Amendment 80 program alluded to in the question. Under Amendment 80, each vessel has an individual allocation that can be moved into or out of a cooperative structure, and the current rules provide for the formation of up to three cooperatives on an annual basis. However, all vessels and entities currently qualified for and participating in the sector, save for FCA and one other vessel, have formed a single cooperative.

Under Amendment 80s implementing regulations as currently drafted, because all entities, save two, have formed a cooperative, FCA is precluded by the rules from forming a second cooperative. It takes nine permits and three legal entities to form a cooperative—FCA has five qualified vessels and a qualified permit, belonging to the *Alaska Ranger*, so there are only a total of seven permits and two entities remaining, a number insufficient to form a second cooperative.

These limitations on cooperative formation form the central claim in FCA's challenge to Amendment 80. One has only 30 days to file a judicial challenge to any regulations promulgated under the MSA or forever forfeit the right to do so. 16 U.S.C. § 1855(f)(1). However, although FCA filed suit to preserve that right, it has stayed the litigation—currently through December 2008—and is working with the North Pacific Council and NMFS to try to resolve the issues through regulatory channels. Currently, a rulemaking process is underway that has the potential to settle most if not all issues in dispute. FCA is hopeful that this process will result in a satisfactory resolution of all issues.

*Question 17.* Is Fishing Company of Alaska currently challenging any other fishing cooperatives or fishery rationalizations? If so, please describe the company's legal challenges and how they relate to your assertions on the formation of a co-op in the freezer longline subsector.

Answer. Other than the stayed litigation described above, no. There is no relationship between the Amendment 80 issues and the freezer longline issues.

*Question 18.* What is Fishing Company of Alaska's reason for proposing an IFQ system but refusing to enter into a cooperative? Does the company believe it would be allocated more fish under an IFQ system than under the proposed cooperative agreement? Is part of the company's reason because it only wants to release catch information to the government and not to other private parties? What does Fishing Company of Alaska see as the differences that make an IFQ system acceptable and a cooperative unacceptable?

Answer. To be clear, FCA's preference is not for a legislated fishery management scheme for this sector. However, it is willing to consider an IFQ program for this fishery, which would achieve the benefits being identified for cooperatives without forcing unwilling parties to necessarily enter into business relationships. As explained above, FCA's support for an IFQ program is conditioned upon application of a fair, equitable, and legally compliant allocation formula that does not work at cross-purposes with years of efforts by the North Pacific Council and NMFS to limit capitalization of this sector. And, which, of course, gives full credit to the historical participants.

*Question 19.* Wouldn't an IFQ system place the burden on the government to make allocation decisions, regulate and monitor the fishery, and enforce quotas? Why should Congress choose to keep that burden on the government when we can allow the formation of a cooperative that will largely allocate, monitor, and enforce its own agreement?

Answer. If Congress chooses to act on FLC's request, the Government would still be assuming the burdens of making allocative choices. It would just be the Congress making these choices—and not NMFS and the Council acting subject to the reauthorized Magnuson-Stevens Act standards. Moreover, NMFS already has the responsibility to monitor and enforce allocations, something that would not change with cooperative management. In the end, this is a public resource that is fully utilized by many different sectors of the North Pacific fishing community, and as such, the government retains ultimate responsibility for sustainably managing and monitoring the fishery.

*Question 20.* Does Fishing Company of Alaska support allowing vessel replacement in the pollock catcher processor fleet and the head & gut fleet?

Answer. Yes.

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FREEZER LONGLINE COALITION'S RESPONSE TO DAVID FRULLA'S TESTIMONY [Freezer Longline Coalition submitted comments on Mr. Frulla's testimony, herein. Mr. Frulla's testimony is reprinted here with Freezer Longline Coalition's comments in italics.]

My name is David E. Frulla. I am a partner in Kelley Drye & Warren, LLP, in Washington, D.C. Since 2006, we have served as counsel to The Fishing Company of Alaska, Inc. ("FCA") with respect to certain matters pending before the U.S. Department of Commerce, the North Pacific Fishery Management Council, and the Congress. I would like to thank Chairwoman Cantwell on behalf of FCA for extending this opportunity to provide testimony on rationalization in the North Pacific freezer longline fishery for Pacific cod. FCA was a pioneer in developing the Pacific cod freezer longline fishery in the 1980s. This testimony will touch first upon concerns that FCA has with the private cooperative proposal put forth by some members of the Freezer Longline Conservation Cooperative ("FLCC"). Next, I will set forth in general terms an alternative that better fits the legal requirements under the Magnuson-Stevens Fishery Conservation and Management Act ("MSA") and is consistent with recent rationalization programs authorized by Congress and the North Pacific Fishery Management Council. Finally, this testimony will touch on issues related to vessel replacement and vessel safety.

#### **I. FCA's Position on the Legislative Proposal for a Pacific Cod Freezer Longline Cooperative**

Some FLCC members are seeking congressional authorization for the formation of a freezer longline cooperative to harvest Bering Sea/Aleutian Island ("BSAI") Pacific cod. The proposal would allow for formation of this cooperative upon agreement by eighty percent of the sector participants. Any vessels not choosing to participate in the cooperative would be allocated the percentage of the total cod quota landed by those vessels, on average, for the years 2003 to 2005. However, such allocation is not exclusive to the non-participating vessels, but would be placed in a common pool subject to a "race-for-fish." The FLCC proposal does not purport to allocate Pacific cod beyond this split between the cooperative and "open access" components of the sector, such as on an individual vessel basis, and does not allow for the formation of other cooperatives. Accordingly, it is an incomplete solution to the safety issues about which this hearing is concerned.

1. *All of the freezer longline fleet, with the exception of the two FCA vessels (34 of 36 vessel owners) are the "some" Mr. Frulla references.*
2. *As all other members have signed the FLCC membership agreement the "common pool subject to a race for fish" would be a race for fish between FCA's two vessels. They alone have the control to end this by signing our membership agreement.*

The terms of the legislative proposal (as we understand it) are, of course, a bit of a formality as more than eighty percent of the sector participants have negotiated an agreement that could be implemented upon passage. FCA has participated in these discussions, but has objected to the terms offered, particularly the awarding of significant amounts of the cooperative share to new and recent entrants. FCA also objects to the proposal's use of 2003 to 2005 as the baseline for determining

the split between the cooperative and “open access” components of the sector. In sum, while rationalization of a sector may have a salutary impact on vessel safety, the imperative to increase safety should not be used as an excuse to drive an unfair allocation.

*1. On Mr. Frulla's comments that “FCA participated in these discussions, but has objected to the terms offered.” The terms offered in Our membership agreement has FCA's two vessels at # 4 and # 6 out of 36 vessels with #1 being the highest vessel in percentage and #36 being the lowest. FCA has two of the top six spots in the agreement and yet is using the process and the position of being the lone holdout to push for more. FCA would seemingly riot be happy unless their vessels were #1 and # 2, and even then we feel they may have issues.*

*2. On Mr. Frulla's comments that “the imperative to increase safety should not be used as an excuse to drive an unfair allocation.” The allocation in this legislative proposal is more than fair, evidenced by the fact that the FCA vessels will be allocated far more than they are now catching. Dr. Jack Tagart with Tagart Consulting, in an independent assessment, estimates FCA's two vessels are currently taking less than 5 percent. The legislation and the years 2003–2005 are estimated to give FCA 6.6 percent, a substantial increase. While several companies are catching more fish than they will receive in the membership agreement, they (vessels currently catching more fish) are willing to do this for the benefits a cooperative fishery allows. Safety is a major concern for our fleet as are all the major benefits of ending the race for fish in our sector. Mr. Frulla's comments that we are using safety as an excuse to drive an unfair allocation are both inaccurate and offensive.*

*A. The Truncated Allocation Period is Inconsistent with Law and Recent Allocation Programs*

First, the legislative proposal's use of such a brief and recent qualification period, 2003–05, is inconsistent with allocative decisions by both Congress and the North Pacific Fishery Management Council. For instance, when allocating cod among sectors in Amendment 85 to the BSAI groundfish plan, that Council considered a range of years from 1995 to 2003, ultimately choosing allocations falling within this range. Currently, the Council is considering 1995 to 2005 (best 5 or 7 years) as the basis for allocating Gulf of Alaska cod. Likewise, when Congress established the Rockfish Pilot Program in 2004, it chose 1996 to 2002, best 5 years, as the qualifying period. Similar ranges were utilized in Amendment 80 to the BSAI groundfish plan and the Bering Sea crab rationalization plan. In fact, FLCC itself used a 5-year period to justify the amount of capacity purchased for the \$35 million freezer-longline Capacity Reduction Program authorized by Congress in section 219 of the Consolidated Appropriations Act of 2005.

*Throwing out all of these sets of years used in a wide variety of fisheries programs is really just a lightly veiled attempt by FCA and their attorney Mr. Frulla to strong-arm and manipulate the process into a more advantageous circumstance for FCA than the entire rest of the parties have already settled on.*

*1. In all of our negotiations we (including the FCA representatives present at our meetings and negotiations) considered a range of years including 1995–2005 and many different sub-sets of years in that range. After much negotiation, we settled on more recent years in that range. Our primary purpose during these negotiations was to form a 100 percent cooperative. The fact that 34 of 36 vessel owners agreed with using more recent years is evidence that we chose the correct method for our group at that time.*

*2. Congress used 3 years (1995–1997) in the American Fisheries Act (AFA). Of all of the cooperatives in the North Pacific, this most matches the size and make up of our fleet.*

*3. Amendment 85 is a “sector allocation” not a fisheries cooperative. Also the “allocating of Gulf of Alaska cod” mentioned in Mr. Frulla's testimony is also a “sector allocation” and not a fisheries cooperative. Adding these into the argument is just simply more mud for the waters.*

More inclusive timeframes are consistent with the MSA, which requires a council to take into consideration “historical fishing practices in, and dependence on, the fishery” when developing a limited access system. 16 U.S.C. § 1853(b)(6)(B). Likewise, the new standards contained in the MSA Reauthorization Act governing limited access privilege programs require consideration of *both* “current and historic harvests.” *Id.* § 1853a(c)(5). By comparison, the qualifying period recommended by

FLCC is not only an outlier with respect to other Council plans and recent statutory allocations, it entirely omits consideration of historical participation.

*On Mr. Frulla's claims that our recommended qualifying period "entirely omits consideration of historical participation", this is far from the truth.*

*1. The requirements of MSA and MSA reauthorization to "consider both current and historical harvests" are exactly what led our groups' negotiations. Ultimately after considering the widest range of years that data was available (1995–2005), we settled on recent years as the best years to use, as these best reflected the recency and dependency requirements of MSA. Current and historic harvest information was provided by an outside fishery statistician at all of our negotiations and this information was presented and considered by all participants, including the FCA representatives present at the meetings.*

Congress correctly instituted a policy of honoring historical catches to avoid rewarding speculative entry into fully utilized fisheries, like that for Pacific cod. Indeed, there have been five new entrants into this sector this decade (although two of these new vessels were just bought out in the buyback program), even as cod TACs have been steady or declining relative to 1990 levels. This recent capitalization, which FCA understands is continuing, runs counter to efforts by the Council and Congress to reduce capacity in this sector and others in the North Pacific.

*100 percent of the vessels in our fleet have entered into the fleet legally and fairly.*

*1. In 1995 the council passed a vessel moratorium and under A. 39 created LLP (Limited License Program) licenses, thus limiting the number of vessels qualified to participate in the groundfish fishery. In 2001, A. 67 issued Pacific cod endorsements on each participants LLP, thus limiting the number of Hook and Line vessels qualified to fish Pacific cod in the Bering Sea and Aleutian Islands. The current size of the fleet at 36 vessels is a direct result of these actions. Some vessels have been retired and their LLP's and cod endorsements were transferred to the new or replacement vessels.*

#### **B. The FLCC Proposal Undermines Capacity Reduction Efforts**

The pre-existing Pacific cod freezer longliner capacity control policy is reflected in the North Pacific Council's 1995 vessel moratorium, and its institution of the license limitation program ("LLP"), which became effective in 2000. Further, in 2002, Amendment 67 to the BSAI groundfish plan was adopted to stabilize the Pacific cod fisheries by creating gear endorsements designed to define the universe of eligible vessels. 67 Fed. Reg. 18129 (Apr. 15, 2002). To qualify for the freezer longline sector, a vessel must have had a catcher-processor endorsed LLP groundfish license and harvested at least 270 tons of Pacific cod in at least 1 year between 1996–1999, inclusive, on the vessel that gave rise to the LLP.

Yet, as explained above, despite the moratorium and LLP program, a total of 5 new vessels entered the fleet as full-time participants between 2000 and 2006, including the new-built *Bering Leader*. Although it is not clear how these vessels became qualified, it is likely that they are using LLPs that arose from one of the ten vessels that fished only 1 year during the qualification period (five of which only fished in 1996).

*The comment in paragraph two above "Although it is not clear how these vessels became qualified" is again mud in the water.*

*1. Mr. Frulla explains in the above paragraph exactly how these vessels became qualified. They qualified like everyone else, including FCA's two vessels—by having sufficient landings in the control years to allow a qualified LLP and Pacific Cod endorsement to be issued. The Council's decision to have a small landing threshold, and a one-year qualifying period, was by design to be inclusive, rather than exclusive, and include nearly all who were participating in the fishery at the time. The goal here was to prevent a massive overcapacity that would have resulted if the Council had not taken action.*

During this post-LLP timeframe, Congress also became concerned with the amount of capacity in this (and other) BSA's groundfish sectors, and so authorized a publicly subsidized buyback program in 2005 (Section 219 of the Consolidated Appropriations Act of 2005). To date, the freezer longline sector is the only sector to have proposed and consummated a buyback under the capacity reduction program.

This history is relevant to FCA's main concerns with the FLCC proposal. For one, all problems relating to excess capacity in this sector, which cooperative legislation is supposed to address, are entirely of the sector's own making. Although the Coun-



cil at least attempted a good first few steps in moderating capacity, what happened in fact was that part-time and sporadically used LLPs (which only had to land 270 metric tons in one year for a cod endorsement) were placed on new, full-time vessels, most now catching between 2,000 and 3,000 metric tons per year. Nor has the buyback been particularly effective in reducing capacity. The buyback, as privately administered by the proponents of this legislative cooperative, only purchased three vessels and an unaffiliated permit for \$35 million; however, two of the vessels purchased were new vessels that began fishing in 2000 and 2001. All this new capitalization has had the effect of eroding FCA's recent overall share of the Pacific cod catch.

*Excess Capacity is only a small element of the need for a cooperative fishery.*

*1. The members of the Freezer Longline Coalition are proud of our involvement in the fleet buyback program. Overcapacity is nearly always the result of non-cooperative fisheries that result in a "race for fish" Our group took an active role in bringing a solution to the overcapacity problem and in fact, is paying back the buyback loan and currently is on pace to retire the loan early.*

*2. The buyback program needed a 75 percent threshold of affirmative votes to move forward. All thirty four of the existing vessels in the Freezer Longline Coalition voted in the affirmative to move forward with the buyback. FCA did not vote in the buyback, nor did they comment in the public comment period allowed before the program was funded.*

*3. The three vessels that were purchased in the buyback represented nearly 8 percent of the recent catch. All of the members felt that this capacity and one latent permit were a fair purchase considering all factors. There were zero "No" votes during the closing of the buyback. All members that voted agreed this was fair market value.*

*4. The Buyback program has been administered by National Marine Fisheries Service, Financial Services Division. The entire process was well documented and conducted according to a strict, transparent process and FCA was included in all negotiations.*

The result has been far from the salutary effect Congress and the Council sought through the license limitation program and the vessel buyback. Indeed, the desire to add capacity to the freezer longline sector continues. In fact, we understand that one of the participants in the buyback has attempted to use buyback funds to purchase an otherwise non-qualified vessel and a currently unused freezer longline-endorsed LLP to put new capacity back into the fishery. If this attempt were successful, then this buyback will have repeated the failures of the original New England groundfish buyback program, which the Government Accountability Office found has led to an increase in capacity, rather than the intended decrease.

*The proposed legislation solves this problem of overcapacity. The situation described above only exists because FCA itself refused to sell a latent permit it owns. This situation (A latent permit existing that could be used to add a vessel to the fleet) continues to be a threat that only FCA controls. However with this proposed legislation the motivation to add capacity to the fleet is completely eliminated.*

This history is relevant to the qualification period being advocated by FLCC because it underscores that the proposed legislation is more designed to garner new entrants' support and solidify existing, private arrangements among the members of FLCC, than it is to ensure equitable treatment of historical participants like FCA. Basing allocations on fishing patterns in 2003–2005 locks in the aberrations that arose from the well-intentioned, but flawed LLP qualification program and rewards those who added capacity at a time when the Council and Congress were trying to stabilize this fishery by protecting "long-time participants." 67 Fed. Reg. at 18129.

*The above paragraph comes close to accusing our group of impropriety; comments of "private arrangements among members" are unfair, in poor taste, and offensive to our members.*

*1. In prior testimony in this document (part B.) FCA claims that five new vessels have entered the fleet between 2000–2006, as pointed out earlier these vessels entered fairly and legally as did all the vessels in the fleet including the two FCA vessels. Here they are now claiming that our qualification period is being advocated to garner support for these new entrants. This line of thinking defies common thinking. 34 vessels owners are in favor of our membership agreement. We chose recent years to reflect current participation and what a vessel was likely*

*to catch if a race for fish were to continue. The accusation that a small number of new participants are in control of the rest of the group is ridiculous.*

*2. 67 Fed. Reg. At 18129, as stated above is the final action for A. 67 by the Council and absolutely was successful in protecting the long-term participants. Without A. 67 many more vessels would have poured into the fishery. We have a fixed fleet as a partial result of Council A. 67 and this allows us to be where we are today, ready and able to form a voluntary fishery cooperative.*

FLCC's proposal is thus not only ill-advised as a matter of policy, but it is legally doubtful as well. It in no way comports with existing law, which is geared toward both protecting historical participants and discouraging speculative entrants in fully-utilized fisheries.

*This comment is just one more reason why we are seeking a legislative tool that will allow our group to form a voluntary fishery cooperative.*

*1. FCA has a long history of bringing legal action against any Council action they do not agree with. They have filed and currently have lawsuits on both Council A. 79 and Council A. 80. The Freezer Longline Coalition could easily spend the next 5 years in the Council process only to end up waiting on a lawsuit to be settled if the outcome was not in FCA's favor.*

*2. The Freezer Longline Coalition believes that all legal hurdles have been well cleared and welcomes legal scrutiny as this legislation goes forward.*

#### *C. The Proposal Fails to Fully Allocate the Pacific Cod Fishery*

Aside from the skewed allocation proposal, the FLCC legislative proposal is flawed in that it does not fully allocate Pacific cod among all sector participants, as do all recent rationalization programs. Rather, the proposed legislation merely seeks to establish an allocation as between the cooperative that it authorizes and those vessels which do not choose to join the cooperative. This means that if the parties in this typically fractious sector were to dissolve the cooperative, the sector would revert to the status quo and the legislation would have accomplished nothing.

Under a typical rationalization program involving cooperatives, such as Amendment 80 to the BSAI groundfish plan, allocations are made to individual vessels, which can then either bring their allocation into a cooperative or into an open access pool. As the FLCC proposal does not purport to allocate fishing privileges on an individual basis, if the cooperative were to fail, the sector would revert to a race-for-fish. The former, more common, approach of fully allocating a fishery and allowing formation of cooperatives is a more rational and durable approach.

*The Membership Agreement signed by all participants besides FCA has a threshold of 75 percent required to break the agreement. It is our firm belief that the benefits of a cooperative fishery far outweigh any one desire, and certainly any possible desire by 75 percent of the group to break the agreement.*

*1. Within the membership agreement our vessels are allocated catch on an individual basis.*

*2. Historically in other voluntary fisheries cooperatives such as the Pacific whiting co-op and the Bering Sea pollock cooperative there has been no movement to "break" the co-op. The realized benefits are just too great. The likelihood that 75 percent of the group will want to go back to the dangerous and highly inefficient methods of a race for fish are remote, at best.*

## **II. FCA's Recommended Alternative**

Since this issue was initially raised before Congress, FCA has consistently maintained that the Council is the appropriate body to develop fishery management measures such as the one FLCC proposes. It has become apparent, however, that given FLCC's persistence and the Council's increasingly heavy workload, it would be constructive to offer an alternative that would meet the desire of the proponents of rationalization for cooperative-style management, while respecting established legal standards for such a limited access privilege program.

Therefore, FCA could agree to program structured either as an individual fishery quota ("IFQ"), with authorization to form a cooperative, or a program structured along the lines of the Rockfish Pilot Program. Each program would allocate the sector's Pacific cod quota to individual vessels based on their historical catch. The latter differs from an IFQ only in that it allows any two or more vessels to form a cooperative or to join their allocation with others in a common pool where a vessel is not guaranteed its individual allocation of fish.

In order to be consistent with other programs, however, the qualification years should range from 1995 to 2005. This would both respect historical participation,

as well as respect the Council's and Congress's intent in limiting access and instituting the vessel buyback program. To use just recent history, as FLCC proposes, sends a counter-productive message that building up capacity in a speculative manner can be rewarded. FCA would be pleased to work with staff to develop the details of such a program.

*This alternative is just another way to give FCA more quota than they deserve and to give FCA a way to continue to operate without cooperating in any meaningful way. FCA seems to give some credence to our approach of gaining the tool we need through Congressional legislation. They simply want a better deal and feel they are in a position of power as the lone holdout.*

*1. The members of the Freezer Longline Cooperative are not opposed to an IFQ type of fishery. The benefits of IFQ fisheries are identical to our proposal. However this is completely unnecessary in our situation. We already have a membership agreement and are fully ready, with very little additional management by government, to form a voluntary cooperative. A voluntary cooperative is far less laborious for the Federal fisheries managers than an IFQ system.*

In closing the Freezer Longline Coalition is asking that Congress move forward in introducing and passing legislation that will give us the tool we need to move forward with all the well documented benefits of a fisheries cooperative. No one company should be allowed to deter the remainder of the fleet from realizing a safer and much more efficient fleet.

